

No. 11704

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellee.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
IN THREE VOLUMES
VOLUME III
Pages 781 to 1182

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for the Eastern District of Washington
Southern Division

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Upon Appeal from the District Court of the United States
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(Testimony of Barry Dibble.)

Direct Examination

(Continued)

Q. Mr. Dibble, when were you first consulted about this particular case, if you recall?

A. Some time last fall.

Q. And have you seen the Priest Rapids power plant?

A. Yes.

Q. And the Canal?

A. Yes.

Q. Have you seen the pumping station?

A. Yes.

Q. Have you made a detailed examination of the irrigation system?

A. No, not very much in detail.

Q. Have you been in court and heard all the evidence in connection with the inventories that were made of the properties?

A. Yes.

Q. In that connection, Mr. Dibble, have you prepared, or have you examined, the properties to give your opinion as to the per cent condition of them? [779]

A. I have.

Q. In some cases were properties missing that were included on the inventories?

A. Yes.

Q. As to those properties you haven't been able to fix a per cent condition, have you?

A. No, but they were in general relatively minor.

Q. Could you just briefly give a description of the power canal and power plant and transmission line, and tell us what you arrived at as the per cent condition and the reproduction cost new, and the cost new less depreciation?

(Testimony of Barry Dibble.)

A. The power canal takes out of the Columbia River about two miles above the power plant, and consists of a channel which to some extent was a natural channel, but has been improved. It now carries the flow of water which is required for the power plant. The power plant—do you wish to go through the entire property in that way?

Q. Yes, please.

A. The power plant or generating stations contains two generating units with a large number of auxiliary items of equipment, including exciters and transformers, coil circuit breakers, switch board, and similar equipment which is needed for operation. From the power plant to the pumping station there is a transmission line, wood pole construction, of 66,000 volts, about 16 miles. 14.4 [780] miles, or 90 per cent, is used jointly to carry power that is sold and power that is used at the pumping station at Coyote Rapids. The pumping station contains four, or did contain four, pumps——

Q. Before we leave the power plant property, Mr. Dibble, could you give us the quantities and the reproduction cost new, the per cent condition, and depreciated values as you have estimated them?

A. The power canal has been inventoried by Mr. Hall, and I have used his inventory of the excavation as the basis for my estimate. He estimated that there were 222,000 cubic yards of excavation. From a general examination of the canal I have estimated that one-third of that excavation was in rock, and two-thirds in gravel. The estimated cost,

(Testimony of Barry Dibble.)

unit cost, which I put on that work is \$1.00 a yard for the rock, 30 cents for the gravel, making a combined cost of \$118,400.00. In connection with the power canal——

Mr. Ramsey: Just a moment, if you please. I didn't get the amount there.

A. \$118,400.00.

Mr. Ramsey: \$118,400.00. All right.

A. In connection with the diversion of water into the canal there is a crib dam that crosses one of the channels of the Columbia River. There is also a spillway structure. [781] The inventory does not contain any estimate of the quantities that are involved, and I felt it best to omit those in making up my estimate, so that my estimate is definitely short the amount of cost involved in those items. To the estimate of excavation I have added 15 per cent for the item of general expense, including such items as management, engineering, supervision, legal, clerical, travel expense, and items of that nature. This amounts to \$17,800.00, making a total of \$136,200.00 for the power canal. As to condition, I estimate that at 100 per cent. There is no depreciation.

As to the generating station, I have taken the rated capacity of this station, 2100 kilowatts, and have analyzed the cost of stations of more or less similarity to this one in head and in capacity, and have availed myself of other data relating to that sort of thing, and have arrived at a reproduction cost for the generating station of \$514,500.00 as a reasonable estimate for this purpose.

(Testimony of Barry Dibble.)

Q. Does that include the property on which it is located, and the equipment in the plant, and the structure itself?

A. I haven't made any allowance for the property on which it is situated. It does include, however, the power plant building, the equipment, the operators' camp, the overhead charges, all the items that would be a direct charge against the plant itself. I have estimated the over-all [782] condition of the plant at 60 per cent. In this connection I probably should say that it also includes, my estimate also includes the substation, the transformers and coil circuit breakers, and that sort of thing, which are included in the building and in the plant as it now stands.

Q. In that connection, Mr. Dibble, when you made the examination, did you have available the copy of Mr. Tinling's inventory? A. I did.

Q. And did you check the property there against his inventory?

A. Yes, I spot-checked it on major items of equipment, so far as it was possible to do it, and examined the property to assure myself in general that it was correct, that the inventory was correct.

Q. And what did you find as to whether it was?

A. Well, I found a few things that needed correction. They have been now corrected in Mr. Tinling's statement. What I had was a preliminary statement. After my examination Mr. Tinling went there and checked it up himself, and corrected his inventory.

(Testimony of Barry Dibble.)

Q. And the inventory as filed here, exhibit 9, is the corrected inventory, is that right?

A. Yes.

Q. Now, you were testifying concerning the per cent condition. [783]

A. I have estimated the over-all per cent condition at 60 per cent, and the reproduction cost less depreciation at \$308,700.00.

Q. Would you give us that again, please?

A. \$308,700.00. The transmission line——

Q. Pardon me, does that include the transmission line?

A. That does not include the transmission line.

Q. Then your figure of \$308,700.00 is, then, the reproduction cost less depreciation, is that correct?

A. Yes, and that figure does include the substation, but not the transmission line.

Q. Could you give us the transmission line now?

A. The transmission line as far as Coyote Junction I have estimated at \$5600.00 a mile. I have made somewhat detailed estimate of that, and 14.4 miles amounts to \$80,600.00. I have estimated the over-all per cent condition on that line at 40 per cent, making the reproduction cost less depreciation \$32,200.00. The total of those items, then, is \$731,300.00 as a reproduction cost new, and \$477,100.00 as the reproduction cost less depreciation. That makes the weighted average per cent condition 65, approximately.

Q. Now, may we go back to the power plant for just a minute? Have you had any experience with

(Testimony of Barry Dibble.)

Allis Chalmers generators similar to the number 1 unit? [784] A. Yes.

Q. Where? Did they have them at the Minadoka project?

A. The turbines there were Allis Chalmers, not the generators; those were Westinghouse generators. The transformers there, however, were Allis Chalmers, a different type than these at Priest Rapids, but much of the equipment at Priest Rapids, there was a considerable similarity to that at the Minadoka power plant. The Minadoka power plant, by the way, was built about the same time as the Priest Rapids plant.

Q. It was built about the same time as the Priest Rapids plant?

A. Yes, it was begun in 1908 and completed, and the installation of all the units, was completed about 1911.

Q. Is it still producing electricity?

A. Oh, yes. It is in very, very good condition.

Q. How long has it been since you have seen it?

Mr. Ramsey: Now, if the Court please——

Mr. Powell: I'll withdraw it.

The Court: All right.

Direct Examination

(Continued)

Q. You say the Allis Chalmers turbine was used in the Minadoka plant? A. Yes.

Q. In your estimate of the reproduction cost of the turbines [785] would you mind explaining

(Testimony of Barry Dibble.)

what kind of turbines are used now, how the ones in the Priest Rapids plant differ from those used now, and how you arrived at the reproduction cost new?

A. Well, since the Priest Rapids plant was built a new type of turbine has been developed, and that is the propeller type, for low head use, similar to what is now in the number 2 unit. The three Francis type runners on one shaft such as is used to operate the number 1 unit was designed and was very good for the purpose of operating at relatively high speed at low heads in a small unit such as the number 1 unit at Priest Rapids, but styles have changed, and that type of installation would not be used any more, so I did not attempt to estimate on that basis, but estimated on the plant that would function equivalently to the one that is at Priest Rapids. It would be very expensive, unreasonably expensive, to duplicate a unit like that.

Q. With three runners?

A. Now at Priest Rapids.

Q. With three?

A. Yes. The propeller type installation, which would be a modern installation, would be less costly, and I thought it was more reasonable to estimate on that kind of a basis, and these plants that I have compared this plant to are in [786] general that type of plant. There is one which I have used in my comparison that was built on the Boise River in Idaho about 1911, that uses the Francis wheels, and I have that in my study.

(Testimony of Barry Dibble.)

Q. Are the Francis type turbines used in modern plants?

A. Oh, yes, they're used very extensively in plants with somewhat higher heads than this at Priest Rapids.

Q. They are single runner units, are they?

A. Usually single runner—altogether single runner units nowadays. That is the type of unit that is used at Grand Coulee, Boulder Canyon, and plants that exceed 60 or 70 feet in head usually use the Francis type.

Q. Now, Mr. Dibble, did you also examine the Priest Rapids Irrigation District pumping station at Coyote Rapids? A. Yes.

Q. At the time you were there what was the condition of the transmission line between Coyote Junction and the pumping plant?

A. It had been removed.

Q. It had been removed? A. Yes.

Q. Would you mind detailing, please, your general description of the pumping station and equipment, and give the same figures for the pumping station that you have given for the power plant?

A. The pumping station consists of four, or it consisted of four main units. One of them had been removed. There were two units which were originally installed that were Allis Chalmers units. The third large unit had been installed between them, and then there was a small fourth unit which was used for pumping early in the season and sometimes for supplementing the larger units later in the

(Testimony of Barry Dibble.)

season. That smaller unit had been taken out. I did not see that. The motors are directly connected to the pumps, and pump water from the Columbia River into the canal.

The two original pumps are connected in tandem and are used in tandem at times when the pumping lift is so great that one of the pumps will not raise the water from the river to the canal. At other times a single pump is used, and comes through the circuit. When the river is high enough so that the pump can pump the water without the boosting effect of the second one, it does so. There is a substation also in connection with the pumping plant, transformers similar in type but smaller than those at the generating station. That is in a house, not a very permanent building, but it seems to be tight still. The pumping station itself is a concrete building.

I understand that in 1943 there was a wood stave pipe from the pumping plant to the canal. That's now been removed, and concrete pipes have been put there in [788] place of it. I also saw the staves and bands that were piled up there, and had been, I understood that they had been purchased and were owned for use by the Irrigation District in replacing the wood stave pipe, but that since the United States took over the plant that they were not used.

Q. What about the intake pipes in the pumping station?

A. The intake pipes are of steel——

(Testimony of Barry Dibble.)

Q. Could you speak a little louder, please?

A. The intake pipes are steel, and it is necessary to start the pumps to create a vacuum in the pump, pull the water up by suction, flood the pump shell and the runners in the pumps, and for that purpose a priming pump had been used. I have a recollection of having seen the priming pump. Some of the other witnesses testified it was removed. I may be wrong.

Q. Was there evidence of any change of design of the pumping station intake?

A. Yes, the installation of the third pump involved a change in the design. The third pump, which is now called number 2 pump, was placed between the two original pumps.

Q. Did you make any survey of the main canal to determine quantities, Mr. Dibble?

A. No, I did not. I saw the main canal at several points, at the intake and farther down the canal, and followed it [789] for quite a distance through the brush.

Q. And did you have, at the time you made your investigation, a preliminary inventory of the property?

A. I did.

Q. And the equipment in the pumping station?

A. Yes.

Q. And did you then check it with the property there?

A. I did.

Q. What did you find with reference to its accuracy?

(Testimony of Barry Dibble.)

A. Well, as to the power plant I found some items that did not check, and those were called to Mr. Tinling's attention, and he revised his inventory after he looked the plant over again. In general, however, the inventory checked all right.

Q. And the inventory as shown in exhibit 9 is the corrected inventory, Mr. Dibble? A. Yes.

Q. This is the one of which I believe you have a photostatic copy?

A. Yes, I've used it and examined the copy particularly in detail.

Q. Now, can you give us, if you will, please, Mr. Dibble, your estimate of the reproduction cost new, per cent condition, and reproduction cost new less depreciation of the properties that you have described in connection [790] with the irrigation properties?

A. While the transmission line had been removed, it had evidently been there. Some of the poles were lying on the ground, and it shows on the map, and has been testified to. I used as the distance from Coyote Junction to the pumping plant 1.6 miles, which checks with the map, and at \$5600.00 a mile, the reproduction cost of this line amounts to \$9,000.00. The condition has been taken the same as the average condition of the other piece of line as of October 1, 1943, making the reproduction cost less depreciation \$3600.00. The Coyote Pumping Plant, I have estimated that in a manner similar to that used in estimating the power plant. The reproduction cost of that is estimated at \$161,-

(Testimony of Barry Dibble.)

000.00. The condition, including what might be called obsolescence, has been estimated at 35 per cent, making the reproduction cost less depreciation \$56,300.00. The main irrigation canal has been estimated on the basis of the inventories made by Mr. Hall, and included in his exhibit. I don't recall the number of that.

Q. 11.

A. Exhibit number 11, and I have used his inventory in connection with my estimate. He shows excavation common, that is, earth, 266,000 cubic yards, and I have estimated 25 cents a yard for that work, making an item of \$66,500.00. [791] On loose rock and gravel excavation, he sets up an item of 74,000 cubic yards, and I have estimated that a 25 cents also.

Q. At 25 cents?

A. Yes, making that item \$18,500.00. I have not included any allowance for lining, because of the condition of the lining, which is practically all depreciated out. Mr. Hall included an item for flumes, but did not give any inventory, and because of lack of information I decided I would prefer to omit that item. In concrete used in transitions and so forth Mr. Hall estimates 200 cubic yards. I've put the cost at \$30.00 a yard, making that item \$6,000.00. Mr. Hall also includes an item for spillway gates and checks. I have omitted that because I didn't have any opportunity to see those items, and there is no inventory included. Those items that I have included amount to \$91,000.00. To them I have

(Testimony of Barry Dibble.)

added an item for general expense again, including management and engineering supervision, legal, clerical, transportation and similar items, 15 per cent, amounts to \$13,600.00, making a total of \$104,600.00. The concrete item in that estimate of \$6,000.00 I have depreciated 50 per cent, which would make the direct depreciation \$3,000.00, and to that I have added its share of the overhead item, amounting to \$450.00, so that I have deducted, in figuring [792] the reproduction, \$3,450.00, making the reproduction cost less depreciation, \$101,100.00. The lateral system, not having been able to see that, and not having any detail on it, I have omitted it also.

The Court: We will recess now until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 17, 1947

1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued)

By Mr. Powell:

Q. I believe when you stopped, Mr. Dibble, you had given us the reproduction cost new less depreciation of the canal, the irrigation canal, had you not?

A. Yes.

(Testimony of Barry Dibble.)

Q. What was the total amount that you had for the portion of the transmission line from Coyote Junction to the pumping plant, the pumping plant and structures, and the irrigation canals, the depreciated cost, the depreciated value, as of April 1, 1943?

A. The total reproduction cost of those items is \$274,600.00, reproduction cost less depreciation is \$161,000.00, which, [793] figuring back, gives a weighted average per cent of condition as 59 per cent.

Q. Now, is that as of any special date?

A. That is of April 1, 1943.

Q. Pardon? A. April 1, 1943.

Q. The figures that you have given us for the power plant, as of what date are they?

A. October 1, 1943.

Q. What, Mr. Dibble, is the rated capacity of the power plant? A. 2100 kilowatts.

Mr. Ramsey: I didn't get that.

A. 2100 kilowatts.

Q. That is the rated capacity of the plant, sir?

A. Yes.

Q. What does that mean?

A. Well, that is the rating of the machine by the manufacturers. It's somewhat of a nominal value, because it doesn't necessarily represent the limit of load which the units can carry, and do carry, but it's a convenient figure to use in comparing different plants.

Q. Now, did you examine the power canal when you were there? A. Yes.

(Testimony of Barry Dibble.)

Q. By the way, what date did you see the canal?

A. It was January 28th. [794]

Q. Can you state from your observations and from the reading on the gauges whether the canal was nearing low stage at that time, of the water in the river?

A. Yes.

Q. Was it?

A. It was rather low; quite low.

Q. And have you obtained any information concerning the condition of the canal in '43, Mr. Dibble?

A. Yes, I've examined the profiles and sections of the canal that I was able to get, and supplemented them with what I was able to see on my visit to the canal.

Q. Now, have you made a study of the method of dividing the power plant property values between power and irrigation?

A. Yes.

Q. On what basis did you do that?

A. On the basis of the pro-ration of the kilowatt hours used for irrigation, or required for irrigation, and those that are available for sale.

Q. In what percentage did you make that division?

Mr. Ramsey: That is objected to, if the Court please, for the reason that this witness's testimony as to any experience he's had on allocation between irrigation and power has been on the basis of the allocation of cost, not allocation of value.

The Court: I'll overrule the objection. [795]

Mr. Ramsey: Exception, if the Court please.

The Court: Exception allowed.

(Testimony of Barry Dibble.)

A. The allocation is 16.7 per cent to irrigation, and 83.3 per cent to commercial power.

Q. Mr. Dibble, you made some tabulations, did you, as to the amount of power produced at the power plant, and its relationship to the flow in the river? A. Yes.

Q. Where did you get the information to make the tabulations?

A. From the log sheets that were identified here on the first day of the trial.

Q. And specifically referring to the sheets, do you have reference to the yellow sheets concerning 1942?

A. The yellow sheets concerning 1942, and the tabulation in the bound book for 1945.

Q. Did you also have available to you the exhibit number 10, the river gauge readings at Trinidad? A. Yes.

Mr. Powell: I would like to have an identification marked, your Honor.

(Whereupon, schedule showing output of Priest Rapids Generating Plant was marked Defendant's Exhibit No. 16 for identification.)

Q. Mr. Dibble, I hand you defendant's identification 16, and will ask you if you know what it is.

A. It is a schedule showing the output of Priest Rapids generating station, and the flow of the Columbia River at Trinidad. It applies to the year 1942. I notice the words "monthly averages" have

(Testimony of Barry Dibble.)

been inserted there. These are not monthly averages, except as to the flow of the river.

Q. They are the total?

A. The total columns, showing the output at Priest Rapids, are totals for the months and total for the year.

Mr. Powell: We offer the identification in evidence.

Mr. Ramsey: Objected to, if the Court please, upon the same grounds as objections to similar compilations; specifically, upon the ground that this covers only the year 1942, whereas there have been brought in court and made available for the tabulations of these witnesses 1937 through 1942, and if there is to be a tabulation of the data brought into court, then it should be a tabulation for the entire period, and not of a selected year by the defendants.

The Court: The witness prepared this? I am not sure that the record shows it was prepared by him or under his direction.

Mr. Powell: Who prepared this identification 16? A. I prepared it. [797]

The Court: The objection will be overruled, and the government allowed an exception. The exhibit will be admitted in evidence.

(Whereupon, Defendant's Exhibit No. 16 for identification was admitted in evidence.)

(Whereupon, schedule showing gauge readings was marked Defendant's Exhibit No. 17 for identification.)

(Testimony of Barry Dibble.)

Direct Examination

(Continued)

Q. I hand you defendant's identification 17, Mr. Dibble, and will ask you if you know what it is?

A. This is the output of Priest Rapids generating station, the gauge readings and the head and the Columbia River flow. The columns, except for the Columbia River flow, are at Priest Rapids. The Columbia River flow is at Trinidad. This sheet also uses the words "monthly averages" and the term "monthly averages" for 1945 is correct in this case, except for the column headed "net output." The net output of kilowatt hours is the totals for each month and the total for the year.

Q. Who prepared the exhibit, Mr. Dibble?

A. I prepared this exhibit.

Q. And from where did you get the information?

A. The information in this case came from the bound volume in which the records of the power plant have been kept. [798]

Q. The book identified by Mr. Yeager?

A. Yes, and from the United States Geological Survey reports on water flow.

Q. Are there gauge readings on the tabulation?

A. The gauge readings, I have not used the gauge readings that are on the tabulations of the Geological Survey. The gauge readings that show here are the gauge readings at the Priest Rapids power plant.

(Testimony of Barry Dibble.)

Q. How many different gauge readings?

A. The canal gauge and the tail race gauge are shown here.

Q. And can you state whether or not these figures represent the first complete calendar year when the records were available here, according to the testimony, Mr. Dibble?

A. Yes, 1945 is the first year in which the gauges have been reported in this log for one entire year.

Mr. Powell: We offer defendant's identification 17 in evidence.

Mr. Ramsey: Objected to upon the same grounds as the objection to exhibit number 16, and upon the further ground that the bound volume referred to by the witness from which the compilation is made contains the records also for the years 1943 and 1944, and presumably for '46, and that this is simply a selected year picked by the defendants to show the record; for the further reason that the total is for a period two years after the plant [799] was taken over by the government.

The Court: The objection will be sustained on the last ground, that the period referred to here is subsequent to the taking. I have in mind particularly the output of the plant under different operation and different circumstances, and subsequent to the taking.

Mr. Powell: I might state, if your Honor please, that the purpose is primarily to show the relationship between the gauge readings, the volume in the river, and the output. We have prepared other ex-

(Testimony of Barry Dibble.)

hibits based upon this same identification. However, I appreciate what counsel says, but we don't have the gauge readings for 1942 or up until the plant was taken over in 1943. There were none available, and we have selected the closest year.

The Court: Well, I think that I would be inclined to admit the gauge readings in the river there for this year, which is the first year, as I understand it, for which they are available, but I don't think it would be proper over the objection of government counsel to put in the output of the plant during 1945. I hardly see how it would be possible to put it in and not have it in for all purposes as far as the jury is concerned.

Mr. Powell: Then may we ask leave to remove that first column, and then if the Court desires, redraw the [800] exhibit with the first column omitted?

The Court: Yes, you might present the exhibit with the first column out of it.

Direct Examination

(Continued)

Q. Mr. Dibble, have you prepared a block graph showing the relationship between the power output in 1942, as shown on the tabulations, and the output of the power plant as shown by the exhibits in evidence, particularly exhibit 16? A. Yes.

Q. Would you get it, please?

Mr. Powell: This may be a little out of order, if your Honor please, because 17 has not been ad-

(Testimony of Barry Dibble.)

mitted and re-introduced, and this will contain some figures as to the exhibit which is to be amended.

(Whereupon, Graph was marked Defendant's Exhibit No. 18 for identification.)

The Court: I assume, however, that the witness had the information independent from this exhibit; he got it from other original sources, didn't he?

Mr. Powell: It contains information taken from the two exhibits he has identified and tabulated.

The Court: But what I mean is that all the data in 17 was procured by the witness from a source other than 17. [801]

Direct Examination
(Continued)

Q. You have taken the information from where to compile it?

A. It's all come directly from the sheets that have been identified by Mr. Yeager.

Q. I hand you defendant's identification 18, Mr. Dibble, and will ask you what it is?

A. It shows the river flow and output as monthly averages at the Priest Rapids generating station.

Q. And for what time?

A. For the years 1942 and 1945.

Q. You have the output in a separate place, do you, Mr. Dibble?

A. Yes.

Q. That is, for 1945?

A. Yes.

(Testimony of Barry Dibble.)

Q. And that can be removed from the graph, can it? A. Yes.

Q. That will leave what in reference to 1945?

A. That will leave the river flow, the gauges, and the head at the power plant.

Q. For 1945?

A. For 1945. For 1942 it will leave the river flow and the output in kilowatt hours.

Mr. Powell: We offer identification 18, if your Honor please, and request leave to remove the portion of [802] it which refers to the output of the plant in 1945. I might state, if your Honor please, this is primarily for the purpose of illustration, and not to establish the facts, I mean the different output, or the river gauges, they being on the tabulation.

Mr. Ramsey: Which portion does counsel propose to remove?

Mr. Powell: We offer the identification.

Mr. Ramsey: Objected to on the same general grounds that counsel is presenting a single year out of data which is available for many years.

The Court: The objection will be overruled and the identification admitted with the understanding that the showing of the power output in 1945 of the power plant will be deleted, if you will show the clerk how that will be done. Can you just paste something over there?

Mr. Powell: I think it will show through, your Honor. I think it can just be cut along the line.

(Whereupon, Defendant's Exhibit No. 18 for identification was admitted in evidence.)

(Testimony of Barry Dibble.)

Direct Examination

(Continued)

Q. Mr. Dibble, will you come down, please, to the board, and point out to the jury and explain what the exhibit number 18 is? [803]

A. The exhibit 18 is intended to illustrate how the river flow affects the gauges and the power output of the power plant at Priest Rapids. In the upper left hand corner of the exhibit is shown the average monthly flow in second feet of the Columbia River at Trinidad for each month of the year. Usually, in fact practically always, the flow of the Columbia River is quite low in the winter months, and is shown here as practically uniform during the months of January, February, and March. Then in April the Columbia River begins to rise, and goes up step by step until the flood occurs in June. June is usually the month of maximum flow. Then the river drops off somewhat in July, more in August, drops back until September, October, November and December are low with some variation.

The power production at Priest Rapids power plant is shown in the lower left hand corner for the same year, 1942. It varies somewhat and considerably with the river. In the month of January the production was more than it was in February and March, and this is net output in kilowatt hours, and is somewhat affected by the fact that February is a short month and it has three days less than January does, and therefore normally is a little

(Testimony of Barry Dibble.)

lower on a graph of this kind. Then as the river rose the production was increased until in June the river got [804] so high that water backed up in the tail race, as shown in the next set of graphs, and the production actually dropped off in spite of the fact there was maximum water supply. In July and August it comes back up again. In the winter months of the year it drops off.

This other vertical line of graphs on the right hand side of the sheet shows for the year 1945. Now, the same effect occurs; in this case, the first four months of the year were very low, also the last three months. In between, the river rose to the peak in June, dropped off in July and down in August, down to the low stages. In 1945 gauge readings were available, and this portion of the graph, the second set of curves from the top of the sheet, shows the tail race and canal gauge readings. This upper one is for the power canal leading to the power house from the Columbia River. As the river dragged along here in the first four months of 1945 the gauge reading in the canal was about uniform, and as the river rose the gauge readings increased until peak in June, and dropped off in the later months of the year, and the same way the tail race goes, but the tail race rise was proportionately much greater in June than was the canal gauge reading. As a result, the net head at the power plant was obtained by subtracting the canal gauge from the tail race gauge. [805]

(Testimony of Barry Dibble.)

Now, in the third chart on the right hand side of the sheet is shown the result of that subtraction. This third chart gives the net head at the power plant as averaged for each month. For eleven months it did not vary very much, but in June, when the river got very high, the head available for power production dropped off, and that affects the possible power output, because when the head gets low the turbines can't pass enough water to generate the power of which they are capable at other times, and the effect is shown here in June of 1942.

Mr. Powell: The clerk has removed the portion of identification 17, your Honor, and we would again reoffer it. The production of power in 1945 has been removed from the exhibit.

Mr. Ramsey: The same objection.

The Court: The identification will be admitted, and the government allowed an exception.

(Whereupon, Defendant's Exhibit No. 17 for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Do you have prepared another graph, Mr. Dibble, showing the relationship between river flow and power production? A. Yes.

Q. That, however, has 1945 figures on it, hasn't it? [806]

A. Well, it has some points that come off the 1945 tabulation.

(Testimony of Barry Dibble.)

Q. Does it show anything like the total output of the plant?

A. Well, they come from that column, yes.

Q. Where have you received the information from which you prepared this graph?

A. It is likewise from these log sheets and the log book, and from these exhibits.

(Whereupon, graph showing relationship between river flow and plant capacity was marked Defendant's Exhibit No. 19 for identification.)

Direct Examination

(Continued)

Q. I hand you defendant's identification 19, and will ask you what it is, Mr. Dibble.

A. That is a graph showing the relationship between river flow and plant capacity of the Priest Rapids generating Station.

Q. There are various points indicated on the graph; what are they?

A. They're the average months as shown in exhibits 11 and 12, is it, or 10 and 11——

Q. No, the ones just identified, 16 and 17.

A. 16 and 17, and some additional daily points in which the capacity of the power plant in kilowatts is related to the flow of the Columbia River at Trinidad. [807]

Q. The 1945 points on the graph, however, are taken from the column eliminated on exhibit 17, is it not?

(Testimony of Barry Dibble.)

A. That is one of the columns used in selecting these points.

Mr. Powell: We offer the identification, if your Honor please. I realize that it does contain some information that we have taken from Exhibit 17.

Mr. Ramsey: Objected to upon all the grounds interposed as to exhibits 16, 17, and 18, and the further reason that there is no way in the world the points for the year 1945 can be eliminated from this exhibit.

Mr. Powell: Can they, Mr. Dibble?

A. Except by pasting something over them, you might.

Mr. Ramsey: Well, I submit the exhibit to the Court as to the impossibility of so doing.

The Court: I hardly see how we could admit an exhibit that is based in part on one that's been excluded already, a portion of it has been excluded. I'll sustain the objection. I might say, however, if it is your purpose to show a relationship between the flow of the river and the power output, I have no objection to showing that as of any date within a reasonable time prior to the taking here, by some other means or some other testimony.

Q. Referring again to identification 19, Mr. Dibble, are the [808] points on here supported by data taken from the exhibits? A. Yes.

Q. With the exception of the 1945 data, which has been excluded from exhibit 17, is that correct?

A. Exhibit 16 is used also by this graph.

Q. Exhibit 16 is the power output and river flow in 1942, is it not? A. Yes.

(Testimony of Barry Dibble.)

Q. And 17 shows the gauge readings, is that correct? A. Yes.

Q. The power output in that year has been removed from the exhibit?

A. From exhibit 17.

Q. Yes. Is the data on identification 19 indicating 1945 taken in toto from exhibit 17?

A. No, the figures on exhibit 17 originate in these other documents, particularly that log book and the Geological Survey report.

Q. Then have you any points on the identification 19 that are taken from years at all prior to 1942? A. No.

Q. All the points there refer to 1942 or 1945, is that right?

A. Yes. The same graph could be developed from data in 1942 and 1943, prior to the taking.

Q. Mr. Dibble, have you formed your opinion, have you been asked to examine the power plant properties and the canal properties and form your opinion as to the valuation on them?

A. I have.

Q. How many different elements did you take into consideration?

A. Well, there are many of them that were involved; the reproduction cost, the condition of the properties, the reproduction cost less depreciation, conditions in the power market, reasonable selling price for available power and energy, the amount of power required for pumping, the cost properly chargeable to power that is used for pumping, the

(Testimony of Barry Dibble.)

reasonable earning capacity of the property as it existed, that is, the power property, as it existed October 1, 1943, the cost of operation and maintenance of the power property, the proper allowance for depreciation reserve on the power property——

Mr. Ramsey: I didn't get that last.

A. The proper allowance for depreciation reserve on the power property, the possible increased output of the generating station that could be secured by more efficient operation, and opportunities that exist to increase the output of the properties over a reasonable, or in a reasonable time.

Q. Mr. Dibble, is any one of the elements you have detailed [810] controlling in fixing value?

A. No.

Q. What was the market condition, condition of the power market, in 1943?

A. In 1943 there was a very excellent power market.

Q. Did that have any relationship to the Hanford Project as such?

A. No, the market existed entirely independently of the Hanford market, the Hanford Project.

Q. The values that you have determined as to these properties, do they have any relationship to the Hanford Project? You haven't fixed the values of this property as a value to the Hanford Project, have you? A. No.

Q. Are you prepared, Mr. Dibble, to give your opinion as to the values of these various properties that we have mentioned? A. Yes.

(Testimony of Barry Dibble.)

Q. Can you, in your opinion, Mr. Dibble, allocate the portion of the power plant value to irrigation, on which you applied the percentage?

A. Yes.

Q. Having in mind the question that has been asked in detail concerning the value of property, what, in your opinion, was the value of the power plant properties, [811] including the canal, transmission line, and the power plant structures and equipment, as of October 1, 1943, excluding the portion which you have allocated to irrigation?

A. \$400,000.00.

Mr. Ramsey: May the record show that the same objection is made to the testimony of this witness as to value that was made to preceding witnesses, that is, that this could not be the proper basis of valuation.

The Court: Yes, the objection will be noted, and the government allowed an exception. I assume that the question as to value means fair cash value?

Mr. Powell: I assume so; I shortened it by saying "having in mind the usual elements."

The Court: Well, I assume the witness knows the measure of value; it isn't necessary to go into detail on that.

Direct Examination

(Continued)

Q. Then, Mr. Dibble, your opinion of the fair cash market value of the power properties, exclud-

(Testimony of Barry Dibble.)

ing the percentage you have allocated to irrigation, that is that amount in cash a buyer ready, able and willing, but not required to buy, would pay to a seller ready, able and willing, but not required to sell, as of October 1, 1943, both being fully informed? [812]

A. Yes, that is the basis.

Q. And that value of the power plant properties was what?

A. Excluding the portion that is allocated to pumping, it is \$400,000.00.

Q. And having in mind that same question as to the measure of the value, what, in your opinion, as of April 1, 1943, was the value of the irrigation properties, that is, that portion of the power plant and transmission line allocated to irrigation, and the transmission line from Coyote Junction to the pumping station, the pumping plant and structures, and the irrigation canals?

A. That is \$240,000.00.

Mr. Powell: You may examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Dibble, as a part of your investigation for the purpose of determining the value on these properties, did you acquaint yourself with the past history of that power plant?

A. Well, I am somewhat familiar with it. I have heard a good deal of discussion about the property.

(Testimony of Barry Dibble.)

Q. Did you acquaint yourself with the operations of the two preceding companies who had the ownership of this power plant before the Priest Rapids Irrigation District acquired it?

A. Not into any detail. [813]

Q. Didn't you consider that the past history of that plant with regard to whether it showed a profit or loss was important?

A. Well, not the early history, no.

Q. Now, what is the basis of your allocation of 16.7 per cent of the generating value of that plant to irrigation?

A. That is based upon the proportion of the energy which is available for use to the amount of energy required for pumping.

Q. And was that for the year 1942 only, or for all of the years that you had access to records?

A. Well, it is based upon the requirement for pumping, which in 1942 was approximately normal.

Q. Did you check on prior years and the amount of power consumed for pumping in prior years, in determining what was normal demand?

A. Yes, I had some of the figures.

Q. I ask you to examine your copy of exhibit 14, if you have it.

A. I think I do not have a copy of that exhibit.

Q. Do you now have a copy of that exhibit?

A. Yes.

Q. I call your attention to the column headed "District use." [814]

A. Yes.

Q. 336,619 kilowatt hours.

A. Yes.

(Testimony of Barry Dibble.)

Q. And I call your attention to the column headed "Coyote use." A. Yes.

Q. 3,141,096 kilowatt hours. A. Yes.

Q. If my mathematics is correct, that gives a total of 3,477,715 kilowatt hours used for district use. A. Yes.

Mr. Cheadle: If we may interrupt, is it the contention of government counsel that the 336,619 kilowatt hours is allocable to irrigation, that being district use at the power plant, am I correct?

Mr. Ramsey: If it is used for district purposes and uses, then it is properly chargeable to irrigation, I presume; it certainly isn't available for sale as surplus power if it is devoted to uses of the District itself.

The Court: Well, proceed with the cross examination.

Cross-Examination

(Continued)

Q. Is 3,477,715 kilowatt hours $16\frac{2}{3}$ per cent of a total generated of 12,238,400 kilowatt hours?

A. I have based my figures not on the total generated, but the total output, which is a somewhat different figure, and the difference between the generated and the output is largely this column that is marked "District use." In other words, the column that is marked "District use" is the power that is used at the power plant in connection with power plant operations, for the cottages there, and for some other possible uses. It has been eliminated from——

(Testimony of Barry Dibble.)

Q. It is also the power used in the plant, isn't it, for various purposes? A. Yes.

Q. You're eliminating that and marking it up as a part of the power that is available for sale?

A. Yes.

Q. Don't you propose to use any power in the plant itself in the future?

A. The power is always necessary at the power plant.

Q. Yes.

A. But in order to simplify the figures, it is easier to work with the net output of the plant, in which the number of kilowatt hours generated has been reduced by this power plant use. There is a distinction between generated energy, and the output of the power plant, which is a different figure. [816]

Q. Well, let's see if we've gotten ourselves straightened around here and understand each other. I understand that the first column, generated kilowatt hours, refers to the total amount of power generated by the plant during the year 1942, is that correct? A. I presume that's it.

Q. Now, then, if you deduct the column "District use" from that, you would have a smaller total of generated power, wouldn't you?

A. That's right, that plus the output of the plant.

Q. The output of the plant?

A. The power that leaves the plant.

(Testimony of Barry Dibble.)

Q. Well, then, if we don't add this District use column to the other power used down at the pumping plant, we reduce the amount of generated power by that much in any event, don't we?

A. Yes.

Q. Well, then, if we deduct the "District use" column from the total of 12,238,400 kilowatt hours, we get a net of 11,901,781, is that correct, or approximately so?

A. Yes. May I refer you to exhibit 16, which develops those figures?

Q. Yes. That is the total shown there as "net output"? A. Yes.

Q. All right. Now, 3,141,096 kilowatt hours $16\frac{2}{3}$ per [817] cent of 11,901,781? A. No.

Q. Then just what is the basis of your allocation?

A. It's possible to materially improve the operation of the power plant and develop considerably more energy than has been developed in the past.

Q. So now you're determining the total amount of power not by what has been generated, but by what in your opinion can be generated? A. Yes.

Q. Well, now, as a matter of fact the year 1942 was the highest production year so far as output of power was concerned that the Priest Rapids plant had, wasn't it? A. Yes.

Q. By far, or at least by considerably?

A. By some.

Q. You now propose to increase that over and beyond that point? A. Yes.

Q. And how do you propose to do that?

(Testimony of Barry Dibble.)

A. By more careful operations, to take advantage of the water that is available and the head conditions at the power plant.

Q. You believe that the P. P. & L. operators are not efficient? [818]

A. No, but I think the production——

Mr. Powell: If your Honor please, I think counsel has already objected to the matters after 1943; I think it should apply to him as well as us.

Mr. Ramsey: If the Court please, this is cross-examination.

The Court: Yes, I think it should be limited to the figures before 1943.

Mr. Ramsey: This is 1943, that the Pacific Power and Light went in, and 1942 that we're inquiring about.

The Court: All right, if they were there you can ask about it.

Cross-Examination

(Continued)

Q. You don't feel that the P. P. & L. operators were efficient in their operation of that plant?

A. On 1942?

Q. Yes, and 1943.

A. This was not being operated by the Priest Rapids Irrigation District at that time.

Mr. Ramsey: When does counsel contend that the power plant was taken over?

Mr. Powell: October 1, 1943.

(Testimony of Barry Dibble.)

Q. You have studied the figures for subsequent years, haven't you, after it was taken over and operated by the Pacific Power and Light?

A. Yes, [819] I've examined it.

Q. And in the light of the figures which you found there under the operation of the P. P. & L., you still feel that the operation in 1942 and prior years was inefficient? A. Yes.

Q. Did you find any greater production in any subsequent year, of power generated at that plant, than was generated there in 1942?

Mr. Powell: Objected to, if your Honor please.

The Court: I'll overrule the objection.

A. I found that important quantities in excess of what was generated could have been generated.

Q. In your opinion? A. Yes.

Q. Further, in your opinion, the P. P. & L. operators were still inefficient in their operation of the plant?

A. Well, they could have gotten more energy from the plant.

Q. Yes, and on the basis of your opinion as to the inefficiency of that operation, you are making your allocation of $16\frac{2}{3}$ per cent of the power generated as a proper amount to be allocated for irrigation? A. It is based on my opinion.

Q. Well, now, let's go back and study the figures a little bit. Just what per cent of 11,901,781 net kilowatt hours is the 3,141,096 kilowatt hours used [820] for the operation of the Coyote pumps alone?

A. That's about 26 per cent.

(Testimony of Barry Dibble.)

Q. About 26 per cent. Now, you propose to so increase the power generated that the amount used for pumping purposes would be only $16\frac{2}{3}$ per cent?

A. Yes.

Q. And how much of an increase would that make in the net output of that plant up there?

A. That would be about 60 per cent, or thereabouts.

Q. You would have to increase the output of that power plant 60 per cent in order to make $16\frac{2}{3}$ per cent a fair allocation as to irrigation, wouldn't you?

A. Yes.

Q. Do you think that that plant was operated 60 per cent inefficiently?

A. I think that this amount could reasonably be obtained from it.

Q. From conditions as they existed up there when the government took over?

A. Well, it would require some improvement in various places.

Q. Oh, you propose to rebuild the plant, or add additional facilities, or increase the facilities already existing?

A. It is obvious that minor changes can be made that will improve the plant, and that any purchaser of the plant, [821] would be cognizant of.

Q. Yes. Now, you have heard the court repeatedly rule in this proceeding that we would take this property as it was, without change after the government took it over on any proposed development there?

A. This is the property as it was.

(Testimony of Barry Dibble.)

Q. This is the property as it was, and out of that property as it was you propose to increase the production of power for sale 60 per cent above the highest year that it ever knew under anybody's operation?

A. Well, I'm not, of course, familiar with the very early years, but this is compared with 1942.

Q. Which was the highest year you had any record of?

A. It is the highest year that I worked with.

Q. It was also an unusual year as to river flow, wasn't it?

A. Not particularly unusual. All of these years are relatively low through this period.

Q. Much better than 1945, for instance, by comparison, wasn't it?

A. It was some better, yes.

Q. And of course your chart doesn't reflect any other years, does it?

A. No.

Q. So your allocation of what would be a fair per cent of the value of that property to be [822] allocated to the irrigation of these lands down here is predicated upon the assumption that you can produce from that plant 60 per cent more power than ever has been produced from that plant in any year prior to 1942?

A. 60 per cent more than 1942.

Q. Yes, and 1942 was the highest year you had and knowledge of, wasn't it?

A. Yes.

Q. Before or after?

A. That's right.

(Testimony of Barry Dibble.)

Q. Now, Mr. Dibble, did you take into consideration that there was only about eleven or twelve hundred acres of the land in the Priest Rapids Irrigation District that was being irrigated from those pumps in 1942 and 1943?

A. Yes, I was aware of that.

Q. Yes. Did you also take into consideration that there was other lands within the District that were entitled to demand delivery of water from those facilities?

Mr. Powell: I object, if your Honor please, not being a matter within the province of the jury or within the province of this case. It is a matter of valuing the property.

Mr. Ramsey: I submit this witness has made an allocation of evaluation for irrigation.

The Court: Overruled. [823]

A. I knew there were more lands. I don't know their status as regards water rights.

Q. You've heard the testimony that additional lands were being sold, to be utilized in the irrigation district there; you heard that testimony?

A. Well, I'm not sure that I fully understood just what the situation was.

Q. Before you made this allocation for irrigation purposes did you inform yourself of what lands were entitled to delivery of water through the pumping facilities of the District? A. No.

Q. You just took the amount of water delivered in 1942 and let it go at that, didn't you?

(Testimony of Barry Dibble.)

A. It was obvious to me that the amount of water pumped in 1942 was enough to take care of a very considerably additional amount of land.

Q. And on what did you base that conclusion?

A. On my general knowledge of irrigation requirements.

Q. Yes. Did you investigate to find out whether all the land supposed to be under irrigation was getting water or not?

A. Well, I knew from the testimony that some 1200 acres were irrigated.

Q. Did you investigate to determine whether there was one [824] drop of water ever got back to the end of the Priest Rapids canal or not, of the amount of water pumped in there?

A. I wasn't there, and don't know.

Q. And you did not investigate that point. Did you investigate to find out whether men who owned lands in that District and were entitled to delivery of water had been compelled to cease irrigating a portion of their acreage because they couldn't get water to them with the amount pumped there in 1942 you did not make that investigation. You just assumed that the amount of water pumped into the ditch in 1942 was adequate to take care of all the demands of the lands in the Priest Rapids Irrigation District that was entitled to be irrigated from the facilities of the District?

A. I assumed that the number of kilowatt hours that would be required was represented fairly well by that figure.

(Testimony of Barry Dibble.)

Q. Now, Mr. Dibble, you were a long, long time with the Bureau of Reclamation as an engineer, weren't you? A. Yes.

Q. And during all the time you were with the Bureau did you ever assume in any instance anything with respect to what the demands of land might be for irrigation until you made a complete investigation? A. Yes. [825]

Q. You did assume it? A. Yes.

Q. On what basis did you assume it?

A. On the basis of reasonable duty of water on the land.

Q. Did you make any investigation of the amount of seepage losses on the amount delivered to the land, or did you assume that when water was put in one end of the ditch, all of it came out at the other? A. No, I did not assume that.

Q. You did not assume that, you bet you didn't; you did make an investigation to see how much water was getting to the land in every instance.

A. I thought you meant in regard to this Priest Rapids.

Q. I mean in any instance.

A. Well, it is quite customary to make assumptions as to the duty of water at the head of the canal and at the land.

Q. Without any information whatever or any investigation whatever of what the leakage losses might be?

A. Oh, you would need some information, yes.

(Testimony of Barry Dibble.)

Q. Yes, you would need some information.

A. And there was testimony here in this case regarding it.

Q. I heard it. There was several different pieces of testimony. Now, did you take into consideration that these lands that had been recently sold in that District would [826] be entitled subsequent to 1942 to demand water from the facilities of the District?

A. I'm not familiar with the sales.

Q. Did you inform yourself or attempt to inform yourself on those matters? A. No.

Q. In other words, you simply assumed, Mr. Dibble, that the amount of energy that was consumed in 1942 in pumping was adequate to continue to supply all of the water needed by the irrigation district, didn't you?

A. I assumed that this was a fair allocation.

Q. Yes.

The Court: We'll recess for about ten minutes now.

(Short Recess)

(All parties present as before, and the trial was resumed.)

Cross-Examination

(Continued.)

By Mr. Ramsey:

Q. Now, Mr. Dibble, the generation of power in that plant is very materially affected by the amount

(Testimony of Barry Dibble.)

of water in the Columbia River, and also by weather conditions, isn't it?

A. It is affected by the amount of water in the river.

Q. Well, we'll take that up first. In extreme high water do you get a peak production? A. No.

Q. In extreme low water do you get a peak production? A. No. [827]

Q. As a matter of fact, 1942 was the first year that that plant hadn't been shut down for one or more months during the year, wasn't it?

A. Not to my knowledge, particularly, as regards water supply.

Q. Well, I'm not attempting to determine the cause at this time for the shut down, but as a matter of fact, 1942 was the first year that that plant wasn't shut down for one or more months of the year, wasn't it? A. I don't know.

Q. Now, going to the matter of weather conditions, what would be the effect out there in extremely cold weather of icing up?

A. Extremely cold weather is normally the period of low water in the Columbia River.

Q. Well, mightn't the water in the canal be frozen to a considerable depth?

A. Well, there might be some icing in the canal, but I think not heavy ice, if the water is kept moving.

Q. Well, as a matter of fact, the water doesn't move very rapidly in that canal, particularly in the lower regions, does it?

(Testimony of Barry Dibble.)

A. Well, in the lower regions there could be ice without handicap to the plant. [828]

Q. Now, in fixing your value you assumed first these things that we have just gone over. You also assumed that in 1943 there was an excellent power market, didn't you? A. Yes.

Q. Would the fact that the area was already served by the P. P. & L. and the Bonneville in any way affect the market?

A. Well, it has an influence on the market.

Q. Yes. In other words, what did you assume would be the selling price of that power?

A. 75 cents per kilowatt of firm power, and 2½ mills per kilowatt hour.

Q. 2½ mills per kilowatt hour. Now, let's see if I have that straight. You propose to sell that at a price of \$9.00 per kilowatt year, plus 2½ mills per kilowatt hour, is that correct? A. Yes.

Q. And on what do you base that rate?

A. Well, that is my opinion of the rate at which it could be sold.

Q. Do you know what the rate of Bonneville is?

A. I have some acquaintance with it.

Q. Well, can you tell us what that rate is?

A. They have a rate of about that same thing.

Q. And where did you propose to sell this power, Mr. Dibble? [829]

A. Well, I didn't have any one place picked out. It is, I think, a reasonable price for market conditions such as existed at that time.

(Testimony of Barry Dibble.)

Q. Well, now, the Bonneville and the P. P. & L. build their lines in to where the consumers can take power, don't they? A. No, not altogether.

Q. Well, what do you mean by not altogether?

A. Bonneville delivers power at some point on the system, and the customer takes the power from there.

Q. Well, the Bonneville power system is built in to practically all of the towns, is it not, and to a point available to the R.E.A.'s?

A. Points available to the R.E.A.'s; I think the towns are not all built into by any means.

Q. I didn't understand what you said.

A. I think by no means has Bonneville built into all the towns.

Q. Well, was it your idea that any consumer of this power you propose to generate out there would build its own line to the plant, or to the line as it now exists, to tap on?

A. That is the basis of my assumption, yes.

Q. Your closest consumer would be what, the R.E.A. mentioned in some of the other testimony some 20 or 25 miles away? [830]

A. Well, there's several points of connection; the Pacific Power and Light Company has a connection there now, the Bonneville Power Administration is in that same vicinity.

Q. Well, do you propose to charge the Bonneville Power Administration this rate on your excess power, and collect it? Do you think you can do that?

(Testimony of Barry Dibble.)

A. I think at times under conditions that existed then they might have been very glad to take it.

Q. In other words, you believe the Bonneville would pay you that amount and then sell it out at the Bonneville figure?

A. I'm not assuming any particular customer.

Q. I understand that. The P. P. & L. did build a line; do you know how much they were paying?

A. I've seen the contract, yes.

Q. Yes; well, it wasn't this much, or anything like it, was it?

A. Well, it was a price that was relatively low.

Q. Well, the P. P. & L. was actually paying $1\frac{3}{4}$ mills, wasn't they, for the power they got from that source?

Mr. Powell: We object to this line of questioning for the reason the power company is not a party to this action, and the contract was taken when the property was taken, so we understand we'll value the properties taken without any burdens.

The Court: I'll overrule the objection. It [831] goes to the value of the excess power.

Cross-Examination

(Continued.)

Q. That is a fact, isn't it?

A. I've seen the contract, yes.

Q. Instead of paying \$9.00 per kilowatt plus $2\frac{1}{2}$ mills per kilowatt hour, the P. P. & L. was paying $1\frac{3}{4}$ mills per kilowatt hour?

A. Yes.

(Testimony of Barry Dibble.)

Q. There was no consumer other than the P. P. & L. closer than this R.E.A. that we've mentioned, is there?

A. Well, there are consumers, yes, but hardly consumers that could be expected to build a line, unless they came into an R.E.A.

Q. Now, it would cost this R.E.A., on your valuation per mile of line, around \$130,000.00 to build a line up there to get power, wouldn't it?

A. Well, I don't believe they would have needed a 66,000 volt line.

Q. Pardon?

A. An R.E.A. would hardly have needed a 66,000 volt line.

Q. Well, what would be your best judgment of what it would cost to build 20 or 25 miles of line in there?

A. Oh, probably \$50,000.00 or more, that is, fifty or sixty thousand dollars.

Q. Well, let's take your price that you propose to market [832] this at, and let's take your production capacity that you've stepped this plant up to; now, what gross annual revenue would that produce?

A. I've calculated about \$49,000.00.

Q. That's gross? A. Yes.

Q. What net revenue would it produce?

A. I have \$20,000.00.

Q. You figure, then, that it would cost about \$29,000.00 to operate and build up a maintenance fund?

(Testimony of Barry Dibble.)

A. Yes, that takes care of the depreciation reserve.

Q. Yes. Now, getting back to the reproduction cost which you placed on the power plant up there, together with its installations, I'm not sure that I understood the method by which you reached your figure there. I believe you figured your reproduction cost at \$513,500.00? A. \$514,500.00.

Q. 514; now, just how did you obtain that figure?

A. Well, I developed the cost per kilowatt of a number of power plants of a size not very remote from the size of this Priest Rapids plant; examined them from conditions affecting the construction; examined them from the effect that the head would have on the cost; determined what would be a reasonable cost per kilowatt of a plant of the general character of the one at Priest Rapids, and [833] then determined what the cost of a 2100 kilowatt plant would be under those conditions.

Q. In other words, you did not go into the matter of reproduction cost of this particular plant at all. You simply averaged over a number of other plants, and said "Well, I think an average plant of this character would cost so much with its installations"?

A. Well, I of course went into the figures of some of the equipment and checked it against these different studies.

Q. Yes; now, in your average plant, what was the cost of the structure?

(Testimony of Barry Dibble.)

A. I did not make a separate determination of the cost of the structure.

Q. In your average plant what was the cost of the installations?

A. These costs are all-inclusive; they include all the various features of the plants.

Q. In other words, for reproduction cost purposes you simply said "Well, power plant number 1, and 2, and 3, and 4, and 5, cost so much money, and the average of that is so much, and that's what I'm putting as the reproduction cost of this plant"?

A. No, I didn't do it that way.

Q. Well, just how did you do it?

A. I arrived at these plants' costs, took [834] into account the various changes in conditions which have occurred since they were built, took into account features as they relate to these plants, and arrived at a fair cost per kilowatt of a plant of this character.

Q. Well, for the purpose of arriving at a fair cost per kilowatt, you did just what I said a minute ago, didn't you? You studied the cost per kilowatt of particular plants?

A. Yes.

Q. And then averaged them off?

A. No, I didn't average them.

Q. You just said "This will be an average"?

A. It's not possible to make an average.

Q. I wouldn't think so, but you simply considered various other plants that produced electric power, and figured that it would cost about so much per kilowatt to construct such a plant as this?

A. Under these conditions, yes.

(Testimony of Barry Dibble.)

Q. So your reconstruction cost doesn't bear the slightest relationship to the actual cost of replacing that plant out there as it actually was?

A. I think it does. I find that method a great deal more accurate and useful than going into a great deal of detail. You can check the cost and get at a very good estimate. [835]

Q. Well, do you figure the costs on a plant that way, or do you figure the value on a plant that way; now which?

A. This is reproduction cost.

Q. Yes, I know, but I'm asking you now, in using this formula do you ordinarily use it in figuring the cost of a plant?

A. In figuring the cost of a plant.

Q. If you were going out to supervise the construction of a hydro-electric plant, is that the method you would use for it?

A. As an estimate of the cost.

Q. Without going out to see how much excavation work to be done, construction, structural work to be done, and so forth?

A. Well, of course the general conditions at the site have some influence on it. The cost of various power plants have a general relationship that can be very well estimated in this way.

Q. Well, if the actual cost of one of those plants ran excessively high, it would very materially affect its value, wouldn't it? That is, excessively high per kilowatt?

A. Well, it would affect the reproduction cost. That is what I am taking into account here.

(Testimony of Barry Dibble.)

Q. Yes.

A. Yes, if cost was 'way out of line it would affect the [836] value.

Q. And on the other hand, if the actual cost of construction was extremely low, there would be a marked effect there, wouldn't there? A. Yes.

Q. So the whole thing pre-supposes an average condition, am I correct in that, your whole formula pre-supposes an average condition?

A. This isn't a formula.

Q. Well, it is the formula that you used in measuring the reproduction cost of this plant, isn't it?

A. No, you take typical plants and consider them as they are related to this particular plant. It is necessary to make some very definite observations of the property, and to know something about the plants which you used in comparison, and I think these plants that I have used are comparable.

Q. And that, of course, is a matter of opinion, whether they are comparable or not?

A. It is my opinion, yes.

Q. In your opinion they were?

A. Yes; they're all plants that I'm familiar with.

Mr. Ramsey: If the Court please, I wish to move to strike this witness's testimony, and I would like to be heard on it. [837]

The Court: If the jury will step out, please.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

(Testimony of Barry Dibble.)

Mr. Ramsey: The government moves to strike the whole of this witness's testimony on reproduction cost less depreciation as a method of determining value, on the grounds and for the reason that the law permits, in cases of this character, certain methods of reaching and determining value. However, those methods are within very strict lines. Included in the methods of reaching valuation is the reproduction cost less depreciation rule, and under that rule the ultimate value is reached by a formula recognized and approved by law, which is the actual reproduction cost of the particular property in its original condition, at a cost as of the date of taking, less a fair depreciation thereon. It now appears that this witness has used a formula peculiar to himself, and not predicated upon the reproduction cost less depreciation formula recognized by law at all, but upon a determination of the average cost of what he believes to be comparable plants, per kilowatt hour, then from the per kilowatt hour rating of this particular plant he works back by a multiplication of what he assumes to be an average cost of comparable properties, and determines the reproduction cost in that manner. It is not a [838] formula that is approved by law or recognized by any court, and I earnestly urge on the court that it is not testimony that should be submitted to any trial jury. It simply opens up the door for a witness to come in here with any sort of a formula that he has personally developed, and submit it, as has been done in this case, on the theory,

(Testimony of Barry Dibble.)

under the name of reproduction cost less depreciation, when as a matter of fact there isn't an element of actual reproduction cost involved in the formula at all.

The Court: I think that after all we're dealing with the testimony of an expert, and he's expressing here expert opinions, one of which is the cost of reproduction new. I don't believe that any particular method of ascertaining that has to be followed, or that there is any set formula. It must, in the final analysis, in any case, rest on opinion in some respects, for instance, the opinion of the yardage that must be necessarily excavated to reconstruct a canal or lateral, and the amount that it would cost, and what would enter into those various elements, and so on, and so I think that a competent electrical engineer and a qualified expert, and this witness is a qualified expert without any question, uses a method which he states is in his opinion, I think it is admissible. The method by which [839] he arrives at it would affect the weight rather than the admissibility of his testimony. That is the view of the court, at any rate. The objection will be overruled and the government allowed an exception. That is, the motion to strike will be denied, that's what I should say, and the government allowed an exception. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

(Testimony of Barry Dibble.)

Cross-Examination

(Continued.)

Q. Now, Mr. Dibble, how do you reach your value on the pumping plant?

A. In a similar way, using the inventories that Mr. Tinling and Mr. Hall testified to, I have set up an estimated plant of the capacity of this plant, and have determined the reproduction cost of a plant of equivalent character that would give equivalent results.

Q. You have not taken into consideration at all the actual cost of the construction of a structure such as the pumping plant down there?

A. Well, it is necessarily involved in the figures that I used. The housing for pumps of this capacity necessarily is part of the whole installation.

Q. You have assumed an adequate structure to house the pumps? A. Yes. [840]

Q. And the motors; adequately built and maintained? A. Yes.

Q. You have assumed adequate installation for the purpose of pumping the required amount of water? A. Yes.

Q. Well, in that assumption did you take into consideration any pumping plants where they had seen fit to couple together in tandem two low head or low lift pumps in order to get the results that one high lift pump would accomplish?

A. Well, that is a little out of the ordinary, of course, but that is not physically uncommon; many

(Testimony of Barry Dibble.)

pumps are built, and one pump is built in two stages, which is in effect what this plant is.

Q. Is it an efficient pumping unit?

A. It could be. I wouldn't say this was particularly efficient in high efficiency, but the fact that the pumps are coupled together doesn't destroy that efficiency.

Q. Does it raise the cost, though, very materially, to the amount of water pumped?

A. Yes; I have taken that in the obsolescence figure. It isn't the type of installation that would be made now.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Mr. Dibble, the power contract you referred to is dated in 1940, wasn't it?

A. Yes, I believe so.

Q. And was there a difference in the power market between 1940 and 1943?

A. Very markedly so.

Q. What was the difference?

A. The market had increased very much in 1943.

Q. Market demand?

A. Market demand, yes.

Q. Now, you have indicated in cross-examination a gross revenue of \$49,000.00 and a net of \$20,000.00. What are the items of deductions you have taken into consideration to make up the \$29,000.00?

A. Operation and maintenance, and depreciation and reserve.

(Testimony of Barry Dibble.)

Q. How do you itemize those?

A. For operation and maintenance of the power properties, that is, the canal and generating station and transmission line, I have \$16,900.00. Depreciation and reserve I've estimated should be an annual—should take an annual charge of \$17,853.00, making a total of \$34,753.00, of which 16.7 per cent is chargeable to irrigation, amounting to \$5803.00, leaving the proportion chargeable to the commercial power \$28,950.00. [842]

Q. And is that ordinarily done, to charge part of the cost of operation to pumping power and part to commercial power, as you have done here?

A. In this kind of a case, yes.

Mr. Powell: Since counsel, if your Honor please, examined this witness concerning operations subsequent to 1943, we would like to introduce identification 19.

Mr. Ramsey: Same objection, if the Court please. Counsel can't depend on the cross-examination for the purpose of getting in his exhibits in his case in chief.

The Court: I'll sustain the objection to the exhibit.

Mr. Powell: Exception, your Honor.

The Court: Exception allowed, yes.

Mr. Powell: I would like to offer, if your Honor please, a certified copy of a state map, certified by the State Highway Department, certified in 1943, to show the general location of the area as it relates to the State of Washington and the surrounding areas.

(Testimony of Barry Dibble.)

The Court: Has that been marked as an identification?

Mr. Powell: It has not, yet. I think counsel has seen it. The purpose, if I might state to your Honor, is to show the location of White Bluffs and the property involved here. [843]

The Court: Is that a map of the entire State of Washington?

Mr. Powell: Yes, your Honor.

The Court: Showing the location of the properties?

Mr. Powell: It doesn't show the location of the properties, but merely White Bluffs, and Hanford, the Horn, and the Allard station described by Mr. Salvini.

(Whereupon, the map of the State of Washington was marked Defendant's Exhibit No. 20 for identification.)

Mr. Powell: We offer the map in evidence.

Mr. Ramsey: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. It will be admitted for the purpose of illustration.

(Whereupon, Defendant's Exhibit No. 20 for identification was admitted in evidence.)

Redirect Examination

(Continued.)

Q. Now, you have been asked on cross-examination, Mr. Dibble, as to whether or not the Bonne-

(Testimony of Barry Dibble.)

ville would be interested in taking this power at the same price at which they were selling it. What is the fact as to whether this power that was available at this plant on October 1, 1943 was the same kind of power that Bonneville was selling as dump power? A. No, it was not. [844]

Q. Why?

A. It was definitely available throughout the season, throughout the year.

Q. And what about the Bonneville 2½ mill power?

A. That was occasional power, withdrawable at any time.

Q. Now, referring to the examination of counsel in reference to the uses of the pumping station, do we have down in the lower left hand corner of exhibit 18 any indication as to the power output?

A. Yes.

Q. There are six high points on your graph, exhibit 18. When do they come with reference to the irrigation season?

A. They come during the irrigation season.

Q. During the irrigation season? A. Yes.

Q. And the Coyote pump power, then, is taken off of the top of those productions, is that right?

A. That is correct.

Q. One of the questions asked you in reference to exhibit 16, or exhibit 14, I believe, was the matter of station uses. Would you mind explaining, Mr. Dibble, what is meant by station uses?

(Testimony of Barry Dibble.)

A. The heading there on exhibit 14 to which I think you refer is district use. [845]

Q. District use.

A. On the log sheets it is called station use, and it is the electricity that is used in the station for station purposes, pumps and lights and perhaps an electric heater and all the various things that are needed in the station, and for the operators' houses, and other purposes directly related to the operation of the generating station.

Q. Have you made allowance for that in your computations? A. I have.

Q. Is that necessary, that that power at all times, or that some power, be used at the plant?

A. Yes.

Q. And have you made allowance for that?

A. I have.

Q. Now, what about this matter of building transmission lines to the place of generation of power? Is that done? A. Yes.

Q. By wholesale customers?

A. Yes, frequently.

Q. You have taken into consideration, have you, in arriving at your possible sale price of this power, a possibility of various customers? A. Yes.

Q. And this contract that was referred to had another element in it of stand-by power, didn't it?

A. Yes. [846]

Q. What is meant by that?

A. That is power which the Pacific Power and Light Company undertakes to supply to the District in case the District needs it.

(Testimony of Barry Dibble.)

Q. And do you remember the amount of that?

A. The price of that is 4 mills per kilowatt hour.

Q. Is that high, or low, for stand-by power?

A. That is rather low.

Mr. Powell: I think that's all.

Recross-Examination

By Mr. Ramsey:

Q. Your firm power would be no greater than your low production rate, would it?

A. The low production that can be maintained.

Q. Yes. Now, turning to exhibit number 14, for power data for the year 1942, I notice your low month is December, in which you produced 487,400 kilowatt hours. In May you produced 1,712,800 kilowatt hours, or about four times as much power as was produced in December. Your firm power would not be determined by the power amount produced during the year, but by the low, wouldn't it?

A. I didn't understand the last part of the question.

Q. I say, your firm power would be determined, not by your peak production as shown here, in May, or in June, or July, or August, but by your low production? [847]

A. By the low potential production, not by the actual production here.

Q. In other words, under your firm power contract, you must be prepared to deliver the amount covered by that contract, at any time and all times?

A. Not at any time. Any time the customer

(Testimony of Barry Dibble.)

wants it, and frequently the customer demand is of such character that it isn't continuous; usually it isn't continuous.

Q. So actually your firm power sales would be limited to the level of your low production?

A. The low potential production.

Q. By that I presume you mean if you could find some way of producing at the low point every year 800,000 kilowatt hours, that would be your low production, wouldn't it? A. Yes.

Q. However, if you were only able to produce 487,000 kilowatt hours, that would be your low production, wouldn't it?

A. That is production in kilowatt hours, not in firm power.

Q. Well, if you were face to face with this situation, that you have this power generated as shown during the year 1942, what would be your firm power production that you would be in a position to market?

A. There isn't enough information there to determine that.

Q. You're not taking this, then, as an average year?

A. You can't divide those kilowatt hour [848] quantities by any figure to determine firm power.

Q. Well, you certainly couldn't, wouldn't be in a position to market 8,743,000 kilowatt hours of firm power in that year, would you?

A. I don't——

(Testimony of Barry Dibble.)

Q. That is the last line, the production less what was used by the District and the pumping plants. That wouldn't all be firm power, would it?

A. This is energy that is listed here, not power at all, and this isn't all firm energy. That is a difficult thing to define.

Q. Well, what do you mean by the term "firm power"?

A. "Firm power" is properly the power that is available at the time the customer wants it.

Q. At all times the customer wants it?

A. Not at all times, necessarily, but at the time that the customer wants it.

Q. Well, just what does that mean? If you must stand by ready to deliver a certain amount of power at any time the customer wants it, wouldn't that require you to deliver it any time the customer wants it?

A. Well, normal electric load is quite cyclic in character and varies from hour to hour during the day, and the firm power needs to be available at the peak time of requirements. Power is kilowatts, and kilowatt hours don't define it. [849]

Q. Well, frankly, Mr. Dibble, my knowledge of electricity is so limited and the field is so broad that I haven't any hope that you can educate me on this thing during this particular trial, and perhaps some of the jurors are in the same boat. I am trying to get this thing in common lay language. You develop a certain amount of power, but that varies from time to time, doesn't it? A. Yes.

(Testimony of Barry Dibble.)

Q. Now, your firm power sales is that production of energy that can be counted upon at any time, am I correct, or at all times?

A. No, it is not necessarily available at all times. In this case, to put the matter in figures, I have taken 1100 kilowatts that can be made available when the customer wants it.

Q. And when you say when a customer wants it, do you mean any time the customer may demand it, or ask for it, or need it? A. Yes.

Q. And your peak production is not that kind of power, is it?

A. The peak production of kilowatt hours?

Q. Yes. A. No, not all of it.

Q. So when you go to market this power that you have you're [850] not going to market all of it as firm power; part of it is going out as dump power, isn't it? A. Yes.

Q. And a considerable percentage of it?

A. Yes, that is in the $2\frac{1}{2}$ mill item for energy; it is only 1100 kilowatts from a power standpoint.

Q. In other words, your $2\frac{1}{2}$ mills does not comprehend a price only on firm power, but it is a price that you're fixing for both firm and dump power?

A. I'm fixing that on energy, not on power at all. You're distinguishing between kilowatts and kilowatt hours. The kilowatts are the energy, and I put that all in as $2\frac{1}{2}$ mills. Some of that may be dump energy, and some of it may be firm energy.

Q. That's what I've been trying to get at. Now, you say that it frequently happens that the con-

(Testimony of Barry Dibble.)

sumer builds a line into the plant producing the power. Do you know of instances of that sort in the State of Washington?

A. If you change the word "consumer" to "customer" I think it would be more appropriate.

Q. All right, let's use the word "customer".

Mr. Powell: Do you want to fix a time, Mr. Ramsey?

Mr. Ramsey: Oh, I don't care, in the history of the state.

Mr. Powell: You mean up to date? [851]

Mr. Ramsey: Up to date.

A. Well, I'm not particularly familiar with the conditions right in the State of Washington, but I do know of several instances 'round about.

Q. Usually that occurs where a company builds a power plant primarily for the purpose of using it for its own business and has an excess, and someone else needs some power in their business, and they build in there to get that excess, now isn't that true?

A. That is frequently the condition.

Q. Do you know of any company that is in the business of producing electric power for sale for general consumption, making that their business, where the consumer builds lines into their plant to get power?

A. Yes, on this case on the Flathead project, the Indian Service, needing the power, builds to the Montana Power plant at Kerr Dam.

(Testimony of Barry Dibble.)

Q. Well, what was the primary purpose of putting in that dam there?

A. To develop power.

Q. Used in any way for irrigation? A. No.

Q. Now, what is the primary use of the power there developed?

A. Oh, all kinds of uses; Montana Power Company develops it as part of its system. [852]

Q. Did the Montana Power Company build this plant there? A. Yes.

Q. Now, who builds in there to get their power?

A. Well, in this instance the Office of Indian Affairs, in connection with the Flathead Project.

Q. In other words, it was a case where the Office of Indian Affairs desired a large amount of power for a particular purpose?

A. Some for pumping, and some for sale.

Q. And they take the power there, and then sell it? A. And use it themselves.

Q. And use——

A. Use it for pumping.

Q. That isn't a case of the ultimate consumer taking it, but of a branch of the government taking it for distribution on its own lines, isn't that the case?

A. Well, the branch of the government is the customer in that case, it is not the ultimate customer. The R.E.A. might be in the same shape. It builds the line as a power distributing concern, and buys the power and distributes it.

(Testimony of Barry Dibble.)

Q. Now, in a case of that character the seller of electrical power would have to present a pretty advantageous contract to the consumer to justify him in going to the expense of building a very expensive line in to get the power, [853] wouldn't he?

A. Well, the dollars are of course the thing that count.

Q. So long as that power was available from another source at or near the price that they would be forced to pay at the plant, there wouldn't be any purpose in any consumer building in there, would there?

A. Well, unless there were other advantages.

Q. Yes. In the main, all of the power companies who are engaged in developing and selling power expect to build lines and sell that power not at the plant, but over the entire area, don't they?

A. That is generally true, but as I understood it, the building of a distribution system in this case was ruled out as speculative, and so I figured this on the basis of delivery at the plant, or on that piece of transmission line.

Q. Yes. Now, if delivery of power is made as it has been made in the past by the Priest Rapids District over this 12 or 16 miles of transmission line, wouldn't there be a line loss between the plant and the place where that power was metered out to the consumer, which in this case, was the P. P. & L. Company?

A. Well, it would be a very small line loss.

(Testimony of Barry Dibble.)

Q. Well, usually don't those contracts specify a certain line loss? [854]

A. Sometimes they do and sometimes they don't; it depends on the contract.

Q. Have you seen the contract? A. Yes.

Q. That contract did provide for a deduction for line loss, didn't it?

A. Yes, a rather large one. Might I add that the loss that is specified there is probably much larger than the actual loss.

Q. Well, do you know that, or do you believe it?

A. I believe it; well, in fact, I know it.

Q. Have you made any check to determine the amount of line loss on that line?

A. Yes, I made some computation.

Q. I didn't understand you. A. Yes.

Q. And what did you find to be the actual line loss on that 16 miles of line?

A. Well, it can't very well amount to more than 2 or 2½ per cent.

Q. The longer the line the greater would be the loss, usually, wouldn't it?

A. Well, the loss in the line itself is very small; most of the loss is in the transformers. Yes, the losses do increase with the length of the line, but in a line this [855] length they're very small.

Q. Now, in figuring your gross income from the sale of what you assumed would be the electrical power up there for sale, did you allow anything for line loss, or did you assume you were going to sell that at the plant and there would be no line loss?

(Testimony of Barry Dibble.)

A. Well, I made an allowance for power that is unsalable, and that potential energy that is unsalable and the losses are included in that item.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Referring to private or public agencies that may have built to the source of power, Mr. Dibble, are you familiar with the conditions at Boulder?

A. Yes.

Q. Who built to the source of power there?

A. Well, a great many agencies have built there, the City of Los Angeles, the Southern California Edison Company, the California Electric Power Company, the State of Nevada, an irrigation district, and some other agencies.

Q. And what about the Yuma Project?

A. On the Yuma Project the power company has built to the power plant, or near the plant; I'm not sure whether they go right to the plant or not.

Q. And in the State of Washington, what [856] about the present plant as now operated by the power company, haven't they built a line into this plant?

A. Yes, at least to Coyote Junction.

Q. Referring to the present connection, Mr. Dibble, outside of the project.

A. Oh, there is also the Beverly line at Priest Rapids, where the power company comes right into the plant to get the power.

(Testimony of Barry Dibble.)

Q. Isn't there a power company line across the hill from Midway that connects with this line?

A. Oh, yes; of course, the power company line had to get out of there and connect with the rest of its system.

Q. Now, I believe that you referred to the rate that you had computed this power on as being a rate that was comparable to the Bonneville rate?

A. It is similar to one of the Bonneville rates.

Q. And what is that rate?

A. It is 75 cents per kilowatt per month, plus 2½ mills a kilowatt hour.

Q. Is that the same rate that you've used here?

A. It is.

Q. How much power have you used as firm power?

A. I've used 1100 kilowatts as the firm power.

Q. 1100 kilowatts of firm power? A. Yes.

Q. The rest of it is [857]—would it be dump energy? A. Yes.

Mr. Powell: I think that's all.

Recross-Examination

By Mr. Ramsey:

Q. This Bonneville rate that you refer to is only for irrigation purposes, isn't it?

A. No, it is a general rate.

Q. Now, this line which was built in by the P. P. & L. to connect with this line, isn't that the direct P. P. & L. line from Yakima to Pasco that passes by there? A. I don't know.

(Testimony of Barry Dibble.)

Q. Well, it continues on from there, don't it in both directions?

A. There are two ends to it, anyway.

Q. Yes. Now, the line at Midway is the Bonneville Power Administration line that runs right through that area, isn't it?

A. Yes.

Q. There wasn't any line built in there to connect up with the Priest Rapids Irrigation District power line, and neither was the P. P. & L. line either, was it?

A. I'm not familiar with the history of that line.

Mr. Ramsey: That's all.

The Court: Any more questions?

Mr. Powell: That's all. [858]

(Whereupon, there being no further questions, the witness was excused.)

Mr. Powell: The defendants rest, your Honor.

Mr. Ramsey: It is now four o'clock, if the Court please, and I believe that the government can put on its case in a part of the day tomorrow. I don't think it will require the entire day to put it on.

The Court: Well, we'll adjourn, if you prefer, then, until tomorrow.

Mr. Ramsey: I would like to ask that, if the Court please.

Mr. Powell: May I ask whether counsel wants any of these matters to make tabulations?

Mr. Ramsey: No; I have requested that the witness Salvini or Reiersen bring in the original

(Testimony of Barry Dibble.)

contract with the Priest Rapids Development Company.

The Court: I think these books and records should be left here where they are available to both sides. They have been the basis of some of the testimony here.

(Whereupon, the Court took a recess in this cause until Tuesday, February 18, 1947, at 10 o'clock a.m.)

Yakima, Washington, February 18, 1947

10 o'Clock A. M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Ramsey: The petitioner, the United States of America, at this time moves the Court to direct the jury to return a verdict herein in a nominal sum, upon the ground and for the reason that the only thing taken under declaration of taking number 99 from the District was the naked legal title to the properties and facilities of the District, and the value of that naked legal title, not coupled with any beneficial interest, could only be a nominal sum.

The Court: The motion will be denied. Exception allowed. Anything else before we bring the jury in?

Mr. Powell: We have one additional instruction.

The Court: All right.

Mr. Cheadle: This is the one additional instruction, your Honor, in addition to the nine we filed last night, and I'll have this extra set as soon as I've signed it. [862]

The Court: All right, I think we're ready now. Bring in the jury.

Mr. Powell: May the record show that we have filed our proposed instructions?

The Court: Yes.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

B. SALVINI

recalled as a witness on behalf of the Petitioner, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Where did you reside, Mr. Salvini, prior to the time that the government took over the territory now embraced in the Hanford Engineering Works Project?

A. I didn't get that question.

Q. I say, where did you reside prior to the time that the government took over the territory that is now embraced in the Hanford Engineering Works Project?

A. Where I reside before they took it over?

(Testimony of B. Salvini.)

Q. Yes. A. At Hanford.

Q. How long had you resided in that vicinity?

A. Since 1917, I think it is.

Q. And during that whole period from 1917 until 1943 you were a resident of the Priest Rapids Irrigation District? [863]

A. Yes.

Q. You owned lands within the District?

A. Yes.

Q. What, if any, official position did you hold with the Priest Rapids Irrigation District?

A. I was on the Board of Directors, and I was chairman.

Q. For how long a period were you a director or the chairman of the Board of Directors in the District?

A. Well, I don't know just what date it was, but since—I think it is since they started the District to operate.

Q. That would be about 1931 or '32?

A. Well, the receiver had something to do, I think, at that time, and we operated in conjunction with the receiver, I think; I forget just what the arrangement was at that time.

Q. Well, now, back in 1917 when you first went into the area the lands in what is now known as the Priests Rapids Irrigation District were irrigated from what means, and from what source?

A. The same source that it was in there now.

Q. Who operated what is now the District facilities?

A. Well, at that time there was three companies, I think it was.

(Testimony of B. Salvini.)

Q. Yes. Were those municipal or semi-municipal corporations, or were they private companies? [864]

A. They were private companies.

Q. And were those three companies the Agathon Land Company, the Consumers' Ditch Company, and the Black Rock Power and Irrigation Company?

A. Yes.

Q. And the power plant and transmission lines were operated by the Black Rock Power and Irrigation Company, is that correct? A. Yes.

Q. The pumping plant was operated by which company?

A. By the Consumers' Ditch Company.

Q. And the ditches themselves, the canals, were operated by the Consumers' Ditch Company?

A. The same company.

Q. The land was being sold by the Agathon Land Company, is that correct? A. Yes.

Q. Now, what happened to these companies prior to the time that the District took over the facilities?

Mr. Powell: If your Honor please, I don't know the purpose of these questions, but if it is the purpose of showing the purchase price of the property, I will object as too remote, over ten or eleven years before the property was taken.

The Court: Well, we haven't got to that yet. I [865] think the general history is pertinent here, to show the background of this project. Go ahead with the examination.

(Testimony of B. Salvini.)

A. Well, before I went on that District there was litigation, and this company here was already split when I was up there, in three companies.

Q. Yes.

A. And right in the spring, I guess, 1918 or '19, they started a case, the Adamson and Black Rock Power. The purpose of that, the company, they tried to sell the power over from the land, and they litigated until I don't know just when the decision come out, but it was over ten years after, or so, and being the people they was successful, then they went and had the receiver.

Q. The three companies, and particularly the Black Rock Power and Irrigation Company, went into the hands of a receiver?

A. They went into the hands of the receiver, when they see they couldn't separate the property from that land, so the District just about that time it was alive then; there wasn't anybody else that could take that property, because they couldn't operate it.

Q. And the District itself purchased the property of the Black Rock Power and Irrigation Company?

A. We didn't purchase it; we just took it over from the [866] receiver.

Q. Well, didn't you pay something for it?

A. We just paid the receiver's costs.

Q. Yes. By receiver's costs you mean the upset price set by the Court?

A. The price that the Court set on the receiver's expenses.

(Testimony of B. Salvini.)

Q. Exactly; the price fixed by the Court. Now, prior to the Black Rock Power and Irrigation Company and the other companies taking over there, this whole set-up had been handled by the Hanford Power and Irrigation Company, hadn't it?

A. Well, that was the original company.

Q. They built the plant?

A. Built that stuff.

Q. And built the pumping plant?

A. And finally when that company had to finance that thing, well they sold a lot of stock; the American Power and Light got all that stock, and that's where the trouble started, until 1928 or 1929 when the people knew they couldn't take possession of the power plant, so the District, they organized the District, and took it over.

Q. Well, let's get back to the first step first. The power plant was built by the Hanford Power and Irrigation Company?

A. Yes. [867]

Q. The transmission lines were put in by that company?

A. Well, the transmission line, part was built by the Hanford Power and Irrigation Company, but at the time they were forced to sell a lot of stock to the eastern capital——

Q. Well, never mind that; let's keep on with the history.

A. Well, that's what happened.

Q. Now, the power plant was built by the Hanford Power and Irrigation Company?

A. Yes.

(Testimony of B. Salvini.)

Q. The transmission line, at least in part, was built by the company, is that correct?

A. Well, there was a change during the trial and litigation; I couldn't tell you just what, here, but part of those lines that was built now, the line that was coming to Yakima from Priest Rapids, that was built just about the time that they had to sell a lot of bonds.

Q. Built by whom?

A. The Pacific Power was in the field already at that time.

Q. Well, who built the line?

A. Well, it was the Black Rock Power, just before the splitting of the Black Rock Power and the Consumers' Ditch Company, so that naturally was in the name of the Hanford Power and Irrigation Company.

Q. Now, who built the pumping plant? [868]

A. Well, the same company.

Q. The Black Rock, or the Hanford?

A. The Hanford Power and Irrigation district.

Q. Who constructed the ditch system and the canal system? A. The same company.

Q. The Hanford Power and Irrigation Company? A. The same company.

Q. Now, what happened? How did the ownership of these companies change from the Hanford Power and Irrigation Company to the Black Rock power and irrigation company, and the Consumers' Ditch Company, and the Agathon Land Company?

A. Well, that's just the time that I didn't was there, but I just hear, because there was quite a talk

(Testimony of B. Salvini.)

about what happened before I was there, when the Hanford Power and Irrigation Company was forced into receivership.

Q. And the Black Rock and the Consumers' Ditch Company and the Agathon Land Company took over the assets?

A. No, whoever took over was a fellow by the name Lyon and Pierce, and those was connected with the American Power and Light, and then they split the company, and they say that the Black Rock was independent, they owned the Black Rock, and they told the people they could take the canal.

Q. Let's don't go into what they contended, Mr. Salvini. I am just trying to get the historical background at the [869] present time. I understand there was a lot of contentions taken up to the courts in the various litigation. Following the receivership of the Hanford Power and Irrigation Company these individuals purchased the properties, is that correct? A. Yes.

Q. And then formed the three companies that we have spoken of, the Consumer' Ditch Company, the Black Rock Power and Irrigation Company, and the Agathon Land Company? A. Yes.

Q. And then subsequently these companies went into the hands of the receiver?

A. They went into the hands of the receiver because they was forced——

Q. Let's don't attempt to explain the reasons for the receivership. The fact remains they went into the hands of the receiver, didn't they?

A. They quit.

(Testimony of B. Salvini.)

Q. Well, they were in the hands of the receiver?

A. Yes.

Q. And the Irrigation District purchased these properties from the receiver? A. Yes.

Q. Now, don't answer this question until counsel has had an opportunity to object. What was the price paid by the [870] Priest Rapids Irrigation District for the power plant, together with the canal that serves it with water, the transmission lines, the pumping plant, and the ditch, rather, the ditches, and canal systems and laterals now operating in the District?

Mr. Powell: May we have the date of that, approximate date?

Q. About 1931 or '32?

A. Something like that.

Q. Just a minute, let counsel make his objection.

Mr. Powell: Thank you. We object, if your Honor please, as being too remote in order to furnish evidence of any value at the time of taking in October or April, 1943, and if the Court does permit it, the jury should be instructed it is only received as historical evidence.

Mr. Ramsey: I submit to the Court that each and every one of the witnesses called on the stand have stated in their opinion the historical and financial record of these properties are of importance in determining the present value, or the value in 1943, of those properties, and I am attempting to place before the jury the historical and financial record of the properties up to the time the government took over.

(Testimony of B. Salvini.)

The Court: I think I'll have the jury step out just a moment. We might as well settle this before we [871] go on.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Powell: Another ground to my objection may be, if your Honor please, that this was a distress sale and not a sale between individuals dealing as an ordinary purchaser and seller.

The Court: Well, I think as evidence of sale a receiver's sale wouldn't be a voluntary sale. The price at which an owner acquired the property—correct me if I'm wrong—may or may not be admissible, depending on the lapse of time. Is that the rule, as too remote?

Mr. Ramsey: Generally speaking, your Honor, that is the rule, if applied to properties where the test is the fair market value as determined by comparable sales. We're dealing with properties where we can't apply that rule. We must use every other approach that can be used, and Heaven knows we've used it in this proceeding. Now we're getting into the matter of the direct purchase of this particular property, and granting that it is remote in point of time, nevertheless since we can't deal on a fair market value as established by the sale of comparable properties, where the rule is cinched down "within a reasonable time" as reflecting fair market values, then [872] we must revert to something dif-

(Testimony of B. Salvini.)

ferent again, and this is one approach that I think is proper and right, to give it whatever value it may have in the proceeding, and each of these witnesses have testified "ordinarily, yes, in a case of this sort very great attention would be paid to the financial history of the particular property; we're working on it now as income property, reproduction cost less depreciation, reproduction cost without depreciation, reproduction cost not on the particular plants themselves, but on a hypothetical plant" that the witness believed would be comparable for production of that amount of power, and what the average cost would be. Certainly this is as closely tied in to the ultimate result as any of the approaches used to the present time.

The Court: Historical book cost could have been used, I think, if it was available. This is a little different, however, from historical book cost.

Mr. Ramsey: I will say again that this in part is merely preliminary. I expect to follow the financial history of this matter from the time it was acquired by the District. That can be shown by showing what the bonded indebtedness was for the purpose of purchasing this power site and all the facilities, and then show whether that indebtedness increased or decreased thereafter while they were operating the particular properties [873]

The Court: I think I can hear from the other side.

Mr. Cheadle: First, your Honor, again the leading case of *Olson vs. United States*, Supreme Court

(Testimony of B. Salvini.)

of the United States in 1933. This case has been followed in case after case of the Circuit Courts of Appeal, and cited with approval by the Supreme Court of the United States.

The Court: What is the citation of that again?

Mr. Cheadle: 292 U. S. 246, and I'm reading from page 255:

“That equivalent is the market value of the property at the time of taking, contemporaneously paid in money. It may be more or less than the owner's investment. He may have acquired the property for less than it is worth, or he may have paid a speculative and exorbitant price. Its value may have changed substantially while held by him. The return yielded may have been greater or less than interest, taxes, and other carrying charges. The public may not by any means confiscate the benefits or be required to bear the burden of the owner's bargain. He is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole, but is not entitled to more. It is the [874] property, and not the cost of it, that is safeguarded by state and Federal constitutions.”

We submit, therefore, that what is guaranteed by the Federal constitution to be paid in just compensation in this case, in this trial, is the market value of that property in 1943, and not the cost of it to the Priest Rapids Irrigation District company in 1932 or whatever that date in the early thirties was.

(Testimony of B. Salvini.)

The Court: 1931, I think, wasn't it?

Mr. Cheadle: 1931. We submit that that is so remote that the question of what they paid at that time is a question which is inadmissible under the clear statement of the Supreme Court of the United States in the Olson case. Moreover, and with regard to the point that Mr. Powell made that this was a distress sale, and it was rather unlike most receiver's sales, your Honor, in *Blakely vs. Priest Rapids Irrigation District*, 168 Wash. 267, and I read from page 282, on which page the Supreme Court of this state quoted from the decree of sale entered by this District Court:

“The receivership in this cause has been prolonged far beyond the time anticipated when the court appointed such receiver at the initiation of this litigation. Such receivership has only thus been continued for the purpose of enabling [875] the parties in interest to effect some form of financial re-organization that would assure at receivership sale a purchaser able and willing to carry on and perform the various obligations involved in the conduct of such irrigation enterprise. The various efforts heretofore made by parties in interest to perfect such reorganization and/or to procure a purchaser of the assets at receiver's sale have been so far fruitless. This court has become convinced that it is not practicable or feasible to continue indefinitely the operation of these

(Testimony of B. Salvini.)

receiver is necessarily without funds or credit with which to make essential repairs and replacements on the property involved in said receivership. It is apparent to this court that although the receiver has performed his duties with the utmost faithfulness and competency, a continuance of the receivership beyond the present time will work seriously to the detriment of the irrigation enterprise whose facilities are involved in this litigation."

I do not want to read at too great length from that, your Honor. The Court goes on and concludes that it shall be put up for sale with the upset price merely the amount of indebtedness which the receiver himself had incurred in the operation of the properties during the receivership, [876] for which indebtedness he had issued receiver's certificates, and we submit that that was clearly a distress sale, and that for that additional reason this evidence should not be admitted and go before the jury, and certainly that if over our objection it were admitted, at the time when it comes in we respectfully submit the Court should instruct the jury, and certainly if it does come in it is entitled to the littlest of weight, and we submit that under the Olson case it is not entitled to any weight at all, because this District is entitled to the value of its property in 1943, and it is entirely irrelevant as to what the owner paid for the property, certainly, when he bought it in 1932.

(Testimony of B. Salvini.)

Mr. Ramsey: I submit this is not an ordinary distress sale at all. Had counsel not quoted from the particular case I should have done so myself. Here was a situation where for years and years this receivership was continued for the purpose of enabling them to find a purchaser for this property. This wasn't a case of where the sheriff goes out and puts up property for sale and right there and then knocks it down to the highest bidder. On the other hand, the Court continued the receivership over a long period of years, and during that entire time any person could have purchased the property, and every effort was being made by the receiver and every other party involved to find a purchaser of the property, so it in no sense of [877] the word was a distress sale. The property was for sale, but it wasn't shoved up for sale to the highest bidder at a specific moment and without adequate time in which to canvas the possible purchasers. It was held in receivership for year after year after year to enable the receiver and the owners of the property to find a purchaser. It was anything but a distress sale, and anything but the ordinary type of a forced sale. There isn't the slightest relationship. Now, so far as counsel's other quotation is concerned, certainly what we're attempting to find in this proceeding is the fair market value, and certainly I'm not urging on the court that this is the sole measure of the fair market value, any more than any of the other approaches that have been used represents the fair market value. Boiled down the fair market value

(Testimony of B. Salvini.)

must be determined from the results obtained by all the approaches used, and I submit to the Court that certainly the financial history of this particular property, the prices paid, the results obtained in the operation of the property, are matters that properly should go to the jury in their attempt to determine what represents the fair market value of this particular property.

The Court: I think it is conceded by everyone that the measure of value in this case as stated in *Olson vs. United States* is the fair cash market value at the [878] time of the taking, but in the case of electrical power properties, properties of the kind involved in this action, there isn't an actual market for them. You can't prove the value more directly by comparable sales. It is permissible to show various other things, such as income, reproduction cost new, reproduction cost new less depreciation, and historical book cost, things that do not show directly, any of them, the cash market value, but may be taken into consideration by the jury as bearing indirectly upon that value, so that I think here you could go into the past history of this project if you showed historical book cost, but this matter is different from that, and it just seems to me we must draw the line somewhere here, and it would seem to me that permitting evidence to go to the jury of the price paid for this company at a receiver's sale in 1931, which I think the court can take judicial notice was almost the bottom of the depression, when the measure of value, the ultimate measure, is the

(Testimony of B. Salvini.)

year of 1943, which was referred to as a lush war year, and the objection will be sustained. However, I might state that he can go into the financial history of the operation under the defendant irrigation district to show any pertinent matters as to whether or not the operation was profitable or otherwise. If there is any objection to that I might as well hear it now, because it seems to me that since it has been contended [879] this property has a very substantial value because it can be operated profitably by production of power for commercial sale, that what has happened to them in the past would be pertinent and bearing on whether it was profitable or not.

Mr. Powell: In order to speed things up, may I ask the Court, then, if counsel will be permitted to show the operation of the property in its condition in prior years, because the condition was changed in 1941, the new generator was put in, it was a different plant, half different, anyway.

The Court: Well, I think he can show the operation under this District, and then the matter of changes throughout the years or anything that would have a bearing on it would be a matter of cross-examination or rebuttal.

Mr. Powell: Then is there any information we can furnish counsel to help speed it up?

The Court: He'll probably ask more than he needs. The government is allowed an exception. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

(Testimony of B. Salvini.)

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Now, Mr. Salvini, what was the bonded indebtedness of the Priest Rapids Irrigation District immediately after they [880] acquired the properties that have been described here?

A. Well, right at that date, well, I couldn't tell you—if I had the financial statement with me, but I know that whatever we settled with the government, we was left with \$165,000.00 in bonds.

Q. No, I'm talking now of what the bonded indebtedness was immediately after they acquired the power plant, transmission line, pumping plant, and ditches.

A. Well, it was—we were just reorganized, bonds in 1941, I think it was——

Q. No, Mr. Salvini, I'm not interested in 1941. I'm talking now——

The Court: I think if the reporter reads it.

(Whereupon, the reporter read the question, as follows: "Question: No, I'm talking now of what the bonded indebtedness was immediately after they acquired the power plant, transmission line, pumping plant, and ditches".)

A. That was in 1943?

Q. No, Mr. Salvini, I mean back in 1931 or '32.

A. Oh, that time. I'm pretty sure that the District float \$120,000.00.

Q. Were all the bonds sold?

(Testimony of B. Salvini.)

Mr. Cheadle: If the Court please, just so that the record will be straight, we're agreeable to stipulating [881] as is shown in this Blakely vs. Priest Rapids case the bond issue at the time counsel inquires about was \$125,000.00.

The Court: Is that agreeable, that stipulation?

Mr. Ramsey: That is acceptable, if the Court please.

The Court: All right, the record will show, then, that the bonded indebtedness at that time was \$125,000.00.

Direct Examination

(continued)

Q. Now, was all of that \$125,000.00 worth of bonds sold at that time, Mr. Salvini?

A. Must not. I'm not familiar any more. I don't think it was all sold at that time.

Q. Do you know what the total was of the bonds that were sold and were outstanding at that time?

A. No, I don't.

Q. But it was less than the \$125,000.00 bond issue?

A. I think they used all that money, because there was a lot of work to do at that time on the canals and laterals. It was all broke, and I think they used all that money.

Q. That is, in the repair of the facilities, and so on? A. The repair of the facilities.

Q. Now, from that date, from 1931 or '32, when the District took over these facilities, they operated those facilities continuously down to the time that

(Testimony of B. Salvini.)

the government took [882] over the properties, didn't they? A. Yes.

Q. And what was the bonded indebtedness of the Priest Rapids Irrigation District on the date that the government took over the area out there?

Mr. Powell: If your Honor please, we have a copy of the financial statement of February 28, 1943. Will that help counsel?

The Court: Perhaps you can get what you want from that, and stipulate to it.

Direct Examination

(Continued)

Q. I'll show you, Mr. Salvini, a financial statement which counsel for the District states represents the financial condition of the District on February 12, is it, 1943?

Mr. Powell: February 28.

Q. February 28, 1943.

The Court: '43 did you say?

A. Yes. Now, from this financial statement, if you have no independent recollection, what is shown to be the bonded indebtedness of the District outstanding? A. \$173,000.00.

Q. \$173,000.00. A. Uh huh.

Q. And what is shown to be the warrant indebtedness of the District outstanding? [883]

A. \$10,636.31.

Q. That is the maintenance fund warrant account. What about the construction fund warrant account? As a matter of fact, Mr. Salvini, the

(Testimony of B. Salvini.)

total warrant indebtedness of the District at that time was the sum of \$16,421.09, wasn't it?

A. Yeh.

Mr. Powell: To save time, maybe we can agree that this can go in evidence; the jury can balance it.

Mr. Ramsey: That is satisfactory to me.

The Court: That's all right, but how can the jury figure it out if you can't?

Direct Examination

(Continued)

Q. Well, now, Mr. Salvini, under construction fund warrant account this statement shows \$4,143.74 of warrants outstanding at the beginning of the month of February, doesn't it?

A. Well, I wouldn't tell you until I understand this thing here, because I tell you the reason for it.

Q. Well, read it.

A. Just in six months, this statement here should show the money that we pay out, a lot of bonds and interest on those bonds, before they were due, and everything, and we had that money, so until I get this thing here in my head—— [884]

The Court: Can't you stipulate as to what the current indebtedness was?

Mr. Ramsey: Counsel has stated that he will stipulate that as of the first of the month of February, 1943, there was \$4,143.74 worth of warrants outstanding in the construction fund warrant account, and \$10,636.31 worth of maintenance fund warrants outstanding, as of the first of February, 1943; correct?

(Testimony of B. Salvini.)

Mr. Powell: The last of February, 1943; February 28th.

Mr. Ramsey: Well, these read "warrants outstanding at the beginning of the month".

Mr. Powell: Well, it says the end of the month, too, as to both.

Mr. Ramsey: Well, as of the end of February, 1943.

The Court: Is that acceptable?

Mr. Powell: Yes, your Honor.

The Court: All right, the jury may take that as evidence, then.

Direct Examination

(Continued)

Q. So, Mr. Salvini, during the period that the Priest Rapids Irrigation District was operating these properties the actual bonded and warrant indebtedness outstanding had increased about \$75,000.00—no, about \$60,000.00, hadn't [885] it?

A. Yes.

Q. Now, this increase in bonded indebtedness, could it have been accounted for by the fact that the District had to replace a generator, or a generating unit, in the power plant, and do certain work on the canal up there?

A. Part.

Q. That partly explains it. Do you know how much money was spent on the canal by the District, the power canal?

A. No, I never knew the——

(Testimony of B. Salvini.)

Q. You don't know the exact amount?

A. —the exact amount.

Q. Now, you say at the time that the District took over the ditches they were not in good condition? A. No.

Q. And it was necessary to spend money on the repair of the canals and ditches. What was the condition of those ditches at the time that the government took them over?

A. They were in good shape to serve the land that we had the facilities. We had some new pipe line, just put in in 1940, 48 inch pipe line, down at Hanford, was brand new.

Q. And how much was there of that?

A. Huh?

Q. How much of that pipe line was there that you put in in [886] 1940?

A. Well, we put in the whole line with that, the lateral that was serving the Hanford area.

Q. Yes, but how much was there of it?

A. There was a mile of it.

Q. About a mile? A. About a mile.

Q. And what made it necessary to put in that mile of pipe line?

A. Well, it was out of repair, the other pipe line.

Q. It was impossible to utilize the old pipe line any further, so you had to replace it?

A. Yes.

Q. Well, that normally happened, didn't it? You always had to replace pipe lines if they went to pieces? A. Not every year.

(Testimony of B. Salvini.)

Q. Oh, no; I say as they depreciated and were no longer fit for use, you had to replace them; you expected to do that when you put in a pipe line, didn't you?

A. Yes.

Q. Now, were you able to get water down that canal to the end of it?

A. Yes.

Q. Had no difficulty in getting water down to the end of the canal? [887]

A. No, we didn't have any difficulty, but the only trouble is that probably some at the end of the canal, some day they might say that the water went off; it was the big evaporation, that was on the hot days in the summer, and in 1940 we took off all the flash board, because by adding those flash boards and raising the water every once in a while, well, we was told by the engineer that it would evaporate more than if the water was left running, so after that year we didn't have any complaint any more.

Q. Well, now, as a matter of fact, wasn't it necessary for the farmers down toward the end of that canal to reduce their irrigated acreage because they couldn't get water enough to irrigate the total acreage they were entitled to irrigate?

A. No, that isn't true.

Q. That isn't true?

A. Everyone at the end of the canal, why, they had plenty of water, just like the ones that was up above.

Q. And you don't think that the seepage loss in the canals and ditches would reach 50 per cent of the water that was pumped into the ditches?

(Testimony of B. Salvini.)

A. Oh, no. I don't think it would be over 20 per cent.

Q. You don't think it would be over 20 per cent?

A. If it was that much. [888]

Mr. Ramsey: I think that's all. I might want to recall this witness in case I'm not able to elicit what I wish from the next witness.

Cross-Examination

By Mr. Powell:

Q. Mr. Salvini, I'll ask you to examine this treasurer's statement again. The next to the last item in the right hand side is the bond construction fund? A. Yes.

Q. The last line has the heading "Balance of fund in month." What was that?

A. \$16,421.00.

Q. That was offset against your warrant indebtedness you were just talking about, isn't it?

A. Yes.

Q. And did you also have some lands the District has since been paid for? A. Yes.

Q. Were they an asset of the District too?

A. Well, they were an asset of the District, yes.

Q. It was testified here on Tuesday or Wednesday that the bonded indebtedness at the time the power plant was taken in October, 1943, was \$165,000.00. A. Yes.

Q. The statement of February 28, 1943, shows \$173,000.00. What happened to the difference? [889]

A. Well, we paid some out of that \$16,600.00.

(Testimony of B. Salvini.)

Q. Now, we were talking about the generators, and the generator installed in '41, as accounting for a portion of the bonded indebtedness increase. Did you do any other work between '32 and '43? Was there a water wheel?

A. Well, I don't know if that we used—the water wheel was one item, then there was the work in the canal, when we first started, that was an item that goes in with it.

Q. What about the work in the canal in '41?

A. And the work in the canal, there was replacing several long flumes, and replacement of a full one lateral, and a part of another one, Blakely lateral, they called it, and replacement on part of the one at White Bluffs, because when we take this property over from the receiver they didn't do nothing, they just let it go to pieces. We couldn't run water unless we rehabilitate the whole thing. The power plant, we couldn't work it any more because they just run it in the summer, they let the canal fill up with sand and go to pieces. We had to do some work before we could get the power. At the time we run out from Hanford our bond was \$173,000.00; we had enough revenue to pay for it, all right; paid in advance with interest.

Q. Was there also an item that you spent for—what about the discharge pipe in the pumping station? [890]

A. Well, the discharge pipe at the pumping station, we had a carload of—

(Testimony of B. Salvini.)

Q. Carload of wood staves?

A. Wood staves, treated wood staves, right there on the place. We was going to rebuild the one to discharge. The other one was rebuilt just the year before, inside, with 2 by 6's, and we was going to put in a new one of the other one; we had the staves right there, and the hooks, and everything. They're still up there.

Q. Do you know how much that cost?

A. Well, the staves alone was around \$4500.00 or so, \$5000.00; I'm not saying the right amount.

Mr. Powell: That's all.

Redirect Examination

By Mr. Ramsey:

Q. Now, Mr. Salvini, you're telling about what you did after you took over the plant and the canal and the ditches, you just testified a while ago that was done out of the \$125,000.00 bond issue that was floated by the District at the time you purchased the property, didn't you?

A. No, that first bond issue was, we just barely had enough to satisfy the receiver, I think it is, and they didn't have quite enough to do the necessary work on the repair of whatever we took over, to get the ditches and laterals in shape, because it didn't was enough money; whatever [891] the receiver indebtedness was, that took about all of it.

Q. Well, now, when did you increase your bonded indebtedness out there?

A. Well, I think it was at the time that we put in that wheel, the generator, at Priest Rapids.

(Testimony of B. Salvini.)

Q. In 1939?

A. I think it is around that time.

Q. So the extra amount represented by the increase of your bonded indebtedness in 1939 certainly wasn't used to do the necessary repair work when you took over those facilities in 1932, was it?

A. Well, we didn't have \$189,000.00 altogether; that \$189,000.00 includes the previous bonds, that wasn't paid.

Q. Yes, I understand that, but you didn't increase your bonded indebtedness above the \$125,000.00 until 1939, did you?

A. Well, I would say that we didn't increase it before, I think we—there was a lot of finances through some other way that I ain't got in my head any more; that's a long time in the past, and I don't remember.

Q. Well, you do know, Mr. Salvini, that you didn't pay for any of the repairs you found it necessary to make after you took over those facilities in '31 or '32 out of the increased bond issue made in 1939, did you? You didn't pay for the work—

A. I think—of course, we had the WPA up there working too.

Q. Well, now, let's have a direct answer to the question. A. I didn't remember.

Q. Well, now, Mr. Salvini, you do know that you didn't let the bills for cleaning out that canal up there, and replacing flumes, and things of that sort, done in 1931 or '32, run until 1939 when you

(Testimony of B. Salvini.)

increase your bond issue, to pay, did you? Those bills didn't run for seven or eight years, did they, unpaid?

A. No, they were paid.

Q. And they were paid in 1932 or '33, weren't they?

A. Well, I think they must have been.

Q. So they weren't paid out of the increased bond issue that was made in 1939, were they?

A. Which one?

Q. When you increased your outstanding bond issue from \$125,000.00 to \$185,000.00, or whatever you did increase it to, you didn't pay those bills back in 1931 or 1932 out of the extra money you got by increasing your bond issue in 1939 from \$125,000.00 to \$185,000.00, did you?

A. No, whenever we increased the bond issue we had I think it was \$90,000.00, or \$65,000.00, to the state, and we included it in this one.

Q. Well, I don't care who held the bonds. Let's have an [893] answer to the question.

A. I didn't remember when we had the order of finances.

Q. Even though you don't remember the exact manner of financing, you can answer the question. Read the question.

A. Well, naturally, if we just have that much money, we don't have any money——

Q. Well, that's not an answer to the question, Mr. Salvini. The reporter will read the question. Now, let's have a direct answer to it.

(Testimony of B. Salvini.)

(Whereupon, the reporter read the question, as follows: "Question: When you increased your outstanding bond issue from \$125,000.00 to \$185,000.00, or whatever you did increase it to, you didn't pay those bills back in 1931 or 1932 out of the extra money you got by increasing your bond issue in 1939 from \$125,000.00 to \$185,000.00, did you?")

A. No.

Q. In other words, those bills were all paid up, and the increase in 1939 was not due to the work that you did in 1932 on the power canal, and the increase in 1939 was not due to any replacement of flumes or any replacement of pipe lines or anything of that sort that was done back in 1932, was it? That wasn't what caused you to increase your bonded indebtedness in 1939, was it?

A. Well, not to stuff that was already made, no.

Q. No, that's the point exactly. That's all, Mr. Salvini.

The Court: Any further questions?

Mr. Powell: No, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

The Court: The court will recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

R. S. REIERSON

recalled as a witness on behalf of the Petitioner testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Mr. Reiersen, you are the secretary of the Priest Rapids Irrigation District?

A. Yes, sir.

Q. And prior to taking over the duties as secretary, you were a member of the Board of Directors of the Priest Rapids Irrigation District?

A. A member of the Board of Directors from 1940 until March of 1944.

Q. As secretary of the District you are the custodian of the records of the District?

A. That is right.

Q. I will ask you, Mr. Reiersen, whether about 1938 or 1939 the District, that is, the Priest Rapids Irrigation [895] District, optioned all of its lands acquired by foreclosure or other means, to the Priest Rapids Development Company?

A. The records show that they entered into an agreement with the Priest Rapids Development Company in 1939.

Q. Do you have the original contract that was entered into at that time?

A. I haven't been able to put my hands on it. I've been looking for it, and I couldn't find it in the files. Apparently the previous secretary must have mislaid it.

(Testimony of R. S. Reiersen.)

Q. Do you have a copy of that contract?

A. No, I haven't.

Q. If I showed you a copy of that contract would you recognize it? A. I will, yes.

Q. State whether or not as a part of that contract, and for the purpose of supporting that contract, there were certain resolutions adopted by the Board of Directors of the Priest Rapids Irrigation District? A. In 1939?

Q. Yes, resolutions. A. Yes, there were.

(Whereupon, copy of contract between Priest Rapids Irrigation District and Priest Rapids Development Company was marked Plaintiffs' Exhibit "B" for identification.) [896]

The Clerk: I've been using the word "Plaintiff" because I have a stamp that says "Plaintiff" and I don't have one that says "Petitioner."

Direct Examination

(Continued)

Q. Mr. Reiersen, I hand you plaintiff's identification "B", and ask you whether that is a copy of the contract to which you have referred?

A. That apparently is the correct copy, signed by Salvini and Serier. Salvini was president of the board at that time, and Kenneth Serier was the secretary.

Q. Now, to the original contract, however, was attached a list of lands covered thereby, isn't that true?

(Testimony of R. S. Reiersen.)

A. Yes, a list of the lands that were available for sale, that were owned by the District.

Q. Now, this copy doesn't have attached to it that list of lands? A. No.

Mr. Ramsey: I offer in evidence plaintiff's Exhibit "B" for identification.

Mr. Powell: We object as immaterial, if your Honor please, as having no bearing upon the issue before the jury, the matter of having determined the value of the properties.

The Court: It will be admitted. Objection overruled. Exception allowed. [897]

(Whereupon, Plaintiff's Exhibit "B" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, do you have in your records a copy of the resolutions passed by the Board of Directors authorizing the drawing of this contract with the Priest Rapids Development Company?

A. It is on record in the minutes.

(Whereupon, copy of resolution was marked Plaintiff's Exhibit "C" for identification.)

Q. Mr. Reiersen, I hand you Plaintiff's identification "C", and ask you if that is a copy of the resolution adopted by the Board authorizing the District to enter into the contract with the Priest Rapids Development Company that has just come into evidence?

(Testimony of R. S. Reiersen.)

Mr. Powell: I might state to your Honor and the witness that I compared the copy with the original that appears in Mr. Reiersen's files, and it seems to be a copy.

Mr. Ramsey: The purpose of offering the copy, your Honor, is not to rob the files of the District.

The Court: Well, if no objection is made on the ground that it is a copy, the copy may be used.

A. That is the same copy.

Mr. Ramsey: I offer in evidence plaintiff's [898] exhibit "C".

The Court: It will be admitted:

(Whereupon, Plaintiff's Exhibit "C" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, I'll ask you whether or not your records show that on the 7th day of May, 1940, a supplemental agreement was entered into between the Priest Rapids Irrigation District and the Priest Rapids Development Company, extending and somewhat changing the terms of the original contract of 1939?

A. That is in May of 1940?

Q. Yes.

A. A supplemental agreement was drawn up.

Q. Do you have the original of that supplemental agreement in the District files?

A. It should be. Just the minutes. The minutes are there on file, the resolution authorizing it. The

(Testimony of R. S. Reiersen.)

agreement apparently had been attached to the original copy; at least we couldn't find it.

Mr. Powell: I didn't get that answer.

A. The supplemental agreement has apparently been attached to the copy of the '39 agreement, and we have just the minutes there, a resolution authorizing that supplement agreement. [899]

(Whereupon, copy of 1940 supplemental agreement was marked Plaintiff's Exhibit "D" for identification.)

Q. I hand you Plaintiff's exhibit "D" and ask you if that is a copy of the 1940 supplemental contract referred to? And what was your answer?

A. That is the agreement, or that is the resolution.

The Court: You'll have to speak a little louder, Mr. Reiersen, please.

A. This is from the minutes of the——

The Court: What was the "this"?

A. The exhibit that he handed me.

Q. Well, that is entitled "This Agreement". Is that the agreement that was made between the Priest Rapids Irrigation District and the Priest Rapids Development Company on the 7th day of May, 1940?

A. Yes.

The Court: Are you handing him now plaintiff's identification "D"?

Mr. Ramsey: Yes. We offer plaintiff's identification "D" in evidence.

Mr. Powell: Same objection, your Honor.

The Court: It will be admitted.

(Testimony of R. S. Reiersen.)

(Whereupon, Plaintiff's Exhibit "D" for identification was admitted in evidence.) [900]

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, state whether or not that particular agreement was supported by resolutions of the Board of Directors? A. Yes, it was.

(Whereupon, copy of resolution was marked Plaintiff's Exhibit "E" for identification.)

Mr. Powell: If counsel has no objection I will hand the witness the original file.

Mr. Ramsey: Yes. I think the Court will understand that we have agreed with counsel to use copies, if they prove to be true copies.

The Court: Yes, the copies may be used, if no objection is made on that ground.

Q. I hand you, Mr. Reiersen, plaintiff's identification "E", and ask you what that document is?

A. That is a resolution passed by the Board of Directors of the Priest Rapids Irrigation District, a copy, on May 7, 1940.

Q. In relation and in connection with——

A. Authorizing the supplement agreement.

Q. Of May 7, 1940? A. Of May 7, 1940.

Mr. Ramsey: We offer plaintiff's identification "E" in evidence. [901]

Mr. Powell: Same objection, your Honor.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "E" for identification was admitted in evidence.)

(Testimony of R. S. Reiersen.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, in 1943 was the contract of 1939 and '40 further extended by agreement between the Priest Rapids Irrigation District and the Priest Rapids Development Company?

A. By a resolution of the Board of Directors on February 15, if I remember correctly, the contract was extended to include another year.

Q. Do you have a copy of that particular resolution in your files?

A. I am sure there is a copy in the 1943 files.

(Whereupon, minutes of meeting of February 15, 1943, was marked Plaintiff's Exhibit "F" for identification.)

(Whereupon, resolution, was marked Plaintiff's Exhibit "G" for identification.)

Mr. Powell: To save my objecting, may it be understood that all these matters are over my objection?

The Court: Yes, all these matters in connection with the contract.

Q. I hand you, Mr. Reiersen, plaintiff's identification "F", [902] and I ask you what that is?

A. Exhibit "F" are the original minutes of the meeting of the Board of Directors on February 15, 1943.

Q. Dealing with what?

(Testimony of R. S. Reiersen.)

A. Business transacted at that meeting, including an extension of the contract or agreement with the Priest Rapids Development Company.

Q. I hand you plaintiff's Exhibit "G", and ask you what that document is?

A. That is the resolution authorizing the extension of that contract of March 13, 1939, as supplemented by said contract of May 7, 1940, and is now extended and kept in full force and effect until the 15th day of March, 1944.

Mr. Ramsey: I offer in evidence plaintiff's identifications "F" and "G", and ask leave of the Court to substitute therefor copies, and withdraw the exhibits.

Mr. Powell: That is agreeable.

The Court: Copies may be substituted. They will be admitted over objection of the defendant. Exception is allowed.

(Whereupon, Plaintiff's Exhibit "F" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "G" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, on the 1st day of June, 1943, was [903] there a further resolution passed by the Board of Directors of the Priest Rapids Irrigation District relative to these contracts?

A. What date?

Q. June 1, 1943.

A. Yes, there was.

(Testimony of R. S. Reiersen.)

(Whereupon, copy of resolution dated June 1, 1943, was marked Plaintiff's Exhibit "H" for identification.)

Q. I hand you plaintiff's Exhibit "H" for identification, and ask you what that document is?

A. Plaintiff's "H" is a copy of a resolution passed by the Board of Directors of the Irrigation District on June 1, 1943, wherein the Priest Rapids Irrigation District is giving an option on lands of the District to the Priest Rapids Development Company.

Mr. Ramsey: I offer plaintiff's identification "H" in evidence.

The Court: It will be admitted, over objection of the defendants.

(Whereupon, Plaintiff's Exhibit "H" for identification was admitted in evidence.)

The Court: Was that last one the original, or a copy?

Mr. Ramsey: Copy, your Honor. [904]

(Whereupon, copy of supplemental agreement dated June 29, 1943, was marked Plaintiff's Exhibit "I" for identification.)

Direct Examination
(Continued)

Q. Mr. Reiersen, was there an agreement, a supplemental agreement or real estate contract, entered into about the 29th of June between the Priest Rap-

(Testimony of R. S. Reiersen.)

ids Irrigation District and the Priest Rapids Development Company covering Districts lands?

The Court: 1943?

Q. '43, yes. A. Yes.

Q. I hand you plaintiff's identification "I" and ask you whether that is a copy of such contract?

A. That is a copy.

Mr. Ramsey: I offer plaintiff's identification "I" in evidence.

Mr. Powell: I would like to make this further objection, your Honor, that the identification is dated on June 29, 1943, which was three months after the irrigation properties were taken over by the government, and therefore should have no material bearing in this case on that account.

The Court: Does it relate to the same land under option? [905]

Mr. Ramsey: Yes.

The Court: It will be admitted, then, over objection.

(Whereupon, Plaintiff's Exhibit "I" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, with the exception of the last contract, the copy of the last contract admitted, the lands covered by the contracts are not attached to the copies, but as to the original contracts a description of the land was made a part of the contract, was it not?

(Testimony of R. S. Reiersen.)

A. In the original agreement?

Q. Yes.

A. My understanding was that the land was listed and classified into two groups.

Q. The contract, or option, or whatever you want to call it with the Priest Rapids Development Company covered all the lands of the District, that is, owned by the District, within the boundaries of the Irrigation District itself?

A. That's right.

Q. And by supplemental agreements any lands that were acquired by the District through foreclosure or otherwise within the boundaries of the District were added from time to time?

A. That's right. [906]

Q. So that at all times after the original agreement was entered into, the Priest Rapids Development Company had a contract or option, whichever you want to call it, covering all of the lands owned by the District within the boundaries of the District itself?

A. Yes.

Q. Now, Mr. Reiersen, if you know, what was the purpose of the District in entering into this contract with the Priest Rapids Development Company?

A. At the time this agreement or contract was entered into I wasn't on the Board, but my personal information and what I gathered when on the board, for colonization purposes, to bring in more settlers and also to develop the District in general.

Q. To colonize additional lands within the District?

(Testimony of R. S. Reiersen.)

A. Yes, and at the same time improve and develop the irrigation facilities of the District.

Q. Now, under this series of contracts or extensions of the original contract with the Priest Rapids Development Company, was there land sold within the District between 1939 and 1943 by the Priest Rapids Development Company?

A. From time to time sales were made. I believe there were about 43 contracts made.

Q. Some 43 tracts?

A. 43 contracts made, totalling about 685 acres.

Q. And that was additional lands within the District that had formerly been in the District ownership through foreclosure or otherwise?

A. That is right, yes.

Q. Was there additional lands being negotiated for sale by the Priest Rapids Development Company at the time that the government initiated the Hanford Project?

A. You mean were there—was the Priest Rapids Development Company contemplating sales, or negotiating sales?

Q. Yes, negotiating sales of additional lands at the time the government took over?

A. That was during the war time; as I recollect there were very few sales made at that time, and I don't remember anything being in the process of being marketed. The active salesman was sick in bed, had been for four or five months, and Marc Miller, the president, was working for the Army Engineers.

(Testimony of R. S. Reiersen.)

Q. Had all of the additional 600 acres or so of land that had been sold by the Priest Rapids Development Company been placed back under irrigation at the time that the government took over the area?

A. There were a few exceptions. Most of the tracts were irrigated. There were a few, one tract of about 80 acres, approximately 80 acres, that were sold to a man by the name of Mr. Supple for grazing purposes, and it [908] was not possible to furnish water with that, and it was sold with that understanding. We always had an understanding that the Development Company would not make a sale of land that couldn't be watered unless the buyer put in his own well.

Q. That was not included in the contract?

A. Not included in the contract, but it was a working agreement, a verbal agreement, that we had among ourselves at that time, or while I was on the Board.

Q. Now, let's see if I understand your working agreement. I'll state my understanding; you correct me if I'm wrong. You had a verbal agreement with the Priest Rapids Development Company aside from the contract, and outside the contract, that in the sale of lands they would not sell lands where it would be unduly expensive for the District to deliver water on those lands for irrigation purposes?

A. We were not to deliver or sell land where we couldn't deliver water; at the time we didn't want to spend money to furnish water to small tracts because we were working on a larger plan of development.

(Testimony of R. S. Reiersen.)

Q. In other words, Miller and his associates had agreed with you that before selling a particular tract of land, they would check with the District to see whether irrigation of the tract would impose an additional burden on the District of constructing facilities in order to irrigate [909] it?

A. That's right.

Q. The general understanding also was that as time went on and additional settlers were in the District, and additional money available for the construction of facilities, and additional demand for facilities arose, that the District would extend its facilities to other lands?

A. Yes, that's right.

Q. And then they would be sold by the Priest Rapids Development Company, and that was not a part of the contract, but simply a gentleman's agreement?

A. Gentlemen's agreement, yes.

Q. Between the District and the Development Company. I think that's all.

Cross-Examination

By Mr. Powell:

Q. You stated that as time went on you expected that other settlers would come in. Your situation was pretty well fixed on April 1, 1943, wasn't it, Mr. Reiersen? Did you have plenty of water to furnish all the lands?

A. We furnished water to all the land that we had a demand for during that year, '42.

Q. In '42? A. Yes.

(Testimony of R. S. Reiersen.)

Q. And were there additional lands that were to receive [910] water, or lands that made additional demands for water, between 1942 and April, 1943?

A. Were there additional demands?

Q. Additional demands for water.

A. From new——

Q. Yes, from new tracts.

The Court: From when?

Q. From '42 to April 1, '43. Did you answer, Mr. Reiersen?

A. Well, I want to be sure about the date. Is that from the 1st of 1942, until April?

Q. No, from the close of the season in '42, when you said you had enough water to serve everybody who wanted water, until April 1, '43, were there any new lands requesting water?

A. There had been no additional sales made, and no new demands for water.

Q. Now, this gentlemen's agreement you testified to on your direct examination, was that carried through on all of the transactions that you had with reference to Mr. Miller?

A. Yes, that was an agreement when I came on the Board, and I thought it was part of the contract until I read it.

Q. What was the practice when a sale was being made in which a request might be made for water?

A. Mr. Adams or Mr. Miller would contact the secretary or [911] the Board members and inform them that he had a purchaser for a certain tract, and what was the Board's desire in that respect,

(Testimony of R. S. Reiersen.)

and if they O.K.'d it, why, he closed the deal, and if the Board members thought they couldn't furnish water, they would disapprove it.

Q. And after their disapproval what happened?

A. They would locate them on some other tract, as a rule.

Q. Did you have in the fall of '42 sufficient water to irrigate additional property other than the properties being served?

A. We had a full canal with water usually running out the end of the canal, overflow.

Q. Why were these tracts, then, that you didn't—I mean, why did you not agree to deliver water to these tracts?

A. That might have been sold?

Q. Yes.

A. For the simple reason that there are a large number—if we take the time when the District was first formed, the Hanford Power and Irrigation canal served probably originally around 3500 acres, and when the irrigation district was formed they set certain boundaries, took the portion north of the canal from Coyote Junction to below Hanford, and that land lying between the canal and the river, and then the elections were held whereby the people could have their property excluded within this border. A large number of the people who had their own pumping plants or wells were excluded, so that the Priest Rapids Irrigation District is a checker-board area, and a large amount of this land didn't have any canals or pipe lines serving them.

(Testimony of R. S. Reiersen.)

Q. That is, from the main canal?

A. From the main canal, yes.

Q. Was there plenty of water in the canal to serve them, I mean in the main canal?

A. There was plenty of water to serve additional acreage by reducing the amount.

Q. By reducing what amount?

A. We sold about 100 acres of water from the canal to farmers who were not in the district, and we could have cut them off of service and supplied it to our members within the District.

Q. And could you have supplied additional lands by reducing the amount delivered to each farmer?

A. By reducing the delivery from the 96 acre inches down.

Q. Do you know how many additional acres that would serve?

A. I wouldn't want to state.

Mr. Ramsey: Just a minute; I would ask to have that question made clear. Does counsel propose to reduce the amount given to each acre to six inches?

Mr. Powell: He says he doesn't know, anyway, so [913] I'm not going to ask him.

Cross-Examination

(Continued)

Q. Now, Mr. Reiersen, in the spring of 1943 you, or the District, entered into a contract with Mr. Miller for the sale of some property. That contract

(Testimony of R. S. Reiersen.)

has been introduced in evidence here, and purports to be a contract for the sale of farm property.

A. It is the same contract.

Q. No, I'm referring to the June contract, in 1943.

A. Yes.

Q. Plaintiff's Exhibit "I", Mr. Reiersen; you say it is the same contract what?

A. This is the same form used in the other '43 sales that were made. I say there were 43 contract sales made. This would be 44.

Q. Well, now, look at the contract. Is it dated in '44?

The Court: He means number 44.

A. This is the form used for contract sales by the Irrigation District to the Priest Rapids Development Company.

Q. And that contract was a regular farm sales contract?

A. That's right.

Q. Were you there at White Bluffs and Hanford on June 29, 1943?

A. Yes.

Q. What were the conditions then; who was farming property? [914]

A. There was no farming at the time. The irrigation district didn't operate that season.

Q. And were all the farmers still living there on June 29, 1943?

A. About June 29 I'd say 50 to 75 per cent of the families had moved from the valley and purchased places elsewhere. The only ones who remained were half a dozen or so who had fruit

(Testimony of R. S. Reiersen.)

orchards and were trying to harvest their fruit, and a few merchants in town.

Q. Pardon?

A. And a few merchants in town.

Q. You were still there at that time?

A. Yes.

Q. And where was Mr. Salvini?

A. Living on his farm between Hanford and White Bluffs.

Q. And did you and Mr. Miller know that there wouldn't be any irrigation water delivered on the property?

A. Yes, that was understood. I had received orders, verbal orders, from Fuller of the Army Engineers at Prosser that there would be no planting and no harvesting in 1943. I made inquiry, because I didn't want to spend \$2000.00 or so, \$1500.00 or \$2000.00, in the customary maintenance work on the irrigation canal that season. We had reason to believe that something would happen, because they were crowding us by that time. [915]

Q. Referring to the date of June 29, 1943, had there been any mass meetings of the people there?

A. There was a mass meeting along about March or April, to inform the people that they had to be out at a definite time.

Q. Had any work started in construction on the Hanford Project?

A. Work started just shortly after March 6, on the day we received notice.

(Testimony of R. S. Reiersen.)

Q. And what was the condition of the work on June 29?

A. A tremendous amount of construction, railroad, highway.

Q. Do you know whether or not Mr. Miller had received any offers from the government for the purchase of the property described in the contract?

A. I——

Q. Do you know whether or not Mr. Miller had received any offers from the government for the properties described in the contract?

A. At this time?

Q. Yes, at that time.

A. I don't think so; he wouldn't have because at that time he didn't have—the property was listed in the irrigation district's name up until June 29.

Q. No, I'm referring to June 29, 1943.

A. Yes. [916]

Q. You don't think he had any offers then?

A. Not on the lands on this, if that's what you refer to.

Q. Yes, I'm referring to that.

A. I don't see how he would.

Redirect Examination

By Mr. Ramsey:

Q. Mr. Reiersen, you say there was no demands for delivery of water on lands of the Priest Rapids Irrigation District between the end of the season of 1942 and April of 1943. There wouldn't normally be any demand for water after the irrigation season until the irrigation started the next year, would there?

(Testimony of R. S. Reiersen.)

A. I might explain that by stating the only demand we had for water, it was the custom that the farmers should sign up for water for the succeeding year, and the secretary took those applications. A certain amount made those applications. The others would let it go until spring, but that was for current farming. New sales, we had no—there was no new sales made during that period.

The Court: There have been a number of references to the irrigation season here. I'm not sure that the record shows what the season was. I wonder if that shouldn't be brought out.

Q. What was the irrigation season, Mr. Reiersen, usually?

A. From March 15, sometimes April 15, on to about the 1st day of October? [917]

Q. And in 1943, of course, the Hanford Project had been initiated about February 23, 1943?

A. Yes.

Q. So after the end of the irrigation season in 1942 there was no irrigation of any lands in the district thereafter by the District?

A. That's the last year we operated, or irrigated.

Q. There was water pumped through the canals in the District by the government contractor, wasn't there?

A. DuPont contractors operated the pumping plant.

Q. But the District itself did not supply water for irrigation in 1943? A. No.

Mr. Ramsey: I think that's all.

(Testimony of R. S. Reiersen.)

Mr. Powell: I just have two or three questions on the financial condition of the District. I can ask them now, or later.

The Court: Well, we had better recess until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p. m.)

Yakima, Washington, February 18, 1947

1:30 o'Clock P.M.

(All parties present as before, and the trial was [918] resumed.)

Recross-Examination

By Mr. Powell:

Q. Mr. Reiersen, when were you elected to the Board of Directors?

A. I was elected to take office on January 1, 1940.

Q. You were in the District from '32 on until you left in '43 weren't you?

A. Yes, I arrived there in 1927.

Q. There is evidence that the bonded indebtedness of the District was \$125,000.00 in 1932. What was the bonded indebtedness in 1940?

A. \$89,500.00.

Q. And at that time was there an additional bond issue?

A. In 1940, along July, we paid off \$500.00, leaving a balance of \$89,000.00, and during that same year the District re-financed, floating an additional \$100,000.00 bond issue, making a total of \$189,000.00.

Q. And what was the bond issue in February, 1943?

(Testimony of R. S. Reiersen.)

A. We had reduced that by about \$8,000.00 plus interest each year, until '43; there was a balance of \$173,000.00.

Q. Did you further reduce it thereafter?

A. Another payment was made on July 1, reducing it to \$165,000.00.

(Whereupon, letter from Priest Rapids Development Company dated February 4, 1943, was [919] marked Defendant's Exhibit No. 21 for identification.)

(Whereupon, letter from Priest Rapids Development Company dated April 9, 1943, was marked Defendant's Exhibit No. 22 for identification.)

Q. I hand you defendant's identification 21, Mr. Reiersen, and will ask you if you know what it is?

A. That is a letter received from the Priest Rapids Development Company president, Marc Miller.

Q. Is it part of the records——

A. It was received by the Board, and is part of the records and correspondence of the District.

Q. Does it refer to the option agreement that has been introduced in evidence? A. Yes.

Q. And does the same apply to identification 22?

A. This letter was also received by the Board of Directors from Marc Miller.

Q. Does it refer to the option agreement introduced in evidence? A. Yes.

Q. At that time was Mr. Miller there at White Bluffs?

(Testimony of R. S. Reiersen.)

A. The letter—no, the first letter, the first exhibit, he was not there.

Q. By exhibit you mean identification 21? [920]

A. Yes.

Q. Where was he?

A. I don't recall whether it was written from Seattle, or where. He was with the Army Engineers.

Q. What was he doing with them?

A. Appraiser.

Mr. Powell: We offer both letters, your Honor.

Mr. Ramsey: I don't know the purpose that counsel has in mind in offering the exhibits. For what purpose are they offered?

Mr. Powell: To show the circumstances under which the extension was made, your Honor. I assume that there will be an argument of counsel that the irrigation district extended the option and gave these deeds after the Project was commenced, and the purpose of the letters is to show the reason why the option was extended.

The Court: May I see them, please? I can tell more about it.

Mr. Ramsey: I can't see the materiality of attempting to go into the various reasons which may have led to the drawing of a contract agreement. The contract speaks for itself. Whatever may have been in contemplation of the parties that led them to enter into the contract, the final result is the contract, and I see no materiality in going into what may have been in the minds [921] or the contemplation of the parties to the contract, and for that

reason I object to the introduction of the exhibits. It seems to me that we will simply be encumbering our records with a lot of immaterial issues here, if that sort of thing is permitted to go in.

The Court: They will be admitted, as throwing some light on the transaction. Exception allowed.

(Whereupon, Defendant's Exhibit No. 21 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 22 for identification was admitted in evidence.)

Mr. Powell: That's all.

Mr. Ramsey: That's all.

The Court: That's all, then, Mr. Reiersen.

(Whereupon, there being no further questions, the witness was excused.)

C. MARC MILLER

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Mr. Miller, where do you reside?

A. Seattle, Washington.

Q. And what line of work are you engaged in?

A. I'm a real estate broker.

Q. How long have you been engaged in that type of business? A. About 20 years. [922]

Q. What connection, if any, did you have with the Priest Rapids Development Company?

(Testimony of C. Marc Miller.)

A. I was one of the organizers of the Priest Rapids Development Company, and during most of its life the president of the company.

Q. Now, for what purpose was the Priest Rapids Development Company organized?

A. For the handling of the lands, the sale of the lands within the Priest Rapids Irrigation District.

Q. Were offices maintained by the company for that purpose?

A. Yes, sir, at White Bluffs, Washington.

Q. And over how long a period of time were those offices maintained there?

A. From 1939, it might have been the latter part of 1938, until 1943.

Q. Were you carrying on during that period of time a general real estate broker's business in connection with the affairs of the Priest Rapids Development Company, or devoting all of your time to the sale of the District lands?

A. We were handling general brokerage business in addition to the sale of the lands within the District, of the District lands.

Q. Did you have any sort of working agreement or contract with the District in the matter of the sale of District [923] owned lands?

A. Yes, we had an option on the lands within the Priest Rapids Irrigation District. It was entered into in the spring, I think the first contract was in January of 1939, and that was changed to a new contract in March of '39, I think the 13th day of March, 1939.

(Testimony of C. Marc Miller.)

Q. Some changes made in the contract entered into in January and the one in March?

A. Yes; I don't remember now just what the changes were.

Q. For how long a period was this 1939 contract entered into?

Mr. Powell: Objected to as not the best evidence. The contract is in evidence.

Mr. Ramsey: That's true, your Honor.

The Court: Read the question.

(Whereupon, the reporter read the last previous question.)

Mr. Ramsey: It is merely a preliminary question.

The Court: I don't believe the question is clear. Do you mean how long the negotiations extended?

Mr. Ramsey: No, your Honor. I'll reframe that question.

Direct Examination

(Continued)

Q. Under the 1939 contract you say you were given an option on all of the district lands? [924]

A. Yes, all of the lands which then belonged to the irrigation district on which they could give me an option. There were certain lands within the District that they had other agreements on, that were not included in the original agreement.

Q. Then you would say that your option under that '39 contract extended to all the lands where the title was not already encumbered by an outstanding contract of sale?

A. Yes, sir.

(Testimony of C. Marc Miller.)

Q. Belonging to the District? A. Yes.

Q. Now, how long a period were you given an option on these lands under that contract?

Mr. Powell: That is the question I object to, your Honor.

The Court: Well, I'll overrule the objection. It is shown here.

A. That contract was to run for two years with provisions for renewal at the end of that two years if we complied with certain specified parts of the contract as to the number of acres we had to sell, and other things involved.

Q. Now, was that contract subsequently renewed? A. Yes, sir.

Q. And more than once? A. Twice. [925]

Q. And was the contract as renewed in effect at the time that the government initiated the Hanford Project? A. Yes, sir.

Q. Now, Mr. Miller, by the subsequent renewals of that contract was any additional lands included in the options which were granted you by the District?

A. Yes, the subsequent agreements included all additional land which the irrigation district acquired, and as they acquired land the contract was extended to include that land; I meant as the district acquired land, there was a large block of land that they had some other agreements on, that they cleared title to, and that became a part of my contract, and then the additional land which they acquired by foreclosure of the irrigation assessments was then included.

(Testimony of C. Marc Miller.)

Q. Did your option cover all of the District owned land within the boundaries of the District not covered by other contracts of sale to other parties, at the time that the government took over the area? A. Yes.

Q. Under your contract with the District between 1939 and 1943 did you sell any of the lands belonging to the District? A. Yes, we did.

Q. Do you know the exact amount of land that was so sold by [926] you, that is, by the Priest Rapids Development Company?

A. Well, for what period, Mr. Ramsey?

Q. Between 1939 and 1943, say February 23, 1943.

A. I was of the opinion it was in excess of 500 acres. I heard Mr. Reiersen's testimony of about 600 acres, and I think that is substantially correct.

Q. You don't know the exact acreage?

A. No.

Q. Now, did the taking over of the area by the government interrupt the sale of additional lands belonging to the District that you had under option?

A. Yes, it did.

Q. And do you know about what acreage of land would have been involved in those transactions had it not been stopped by the government's condemnation proceeding?

A. Well, that involves quite a lot, Mr. Ramsey; the original contract—I'm trying to answer your question, and I don't want to go back; the original contract was entered into for one purpose, and when

(Testimony of C. Marc Miller.)

you enter into a contract you can't anticipate all the changes that will be in effect through the life of it, and we had carried on a colonization program there, and had a good number of prospective purchasers at the time the government acquired the land, but the purchasers were delaying their actual purchase until other lands could be put under the [927] irrigation system.

Q. Now, just generally, Mr. Miller, is there anything relative to this contract or to the working agreement that you had with the District outside of the contract itself that you can add to what has already been testified to or has it all been pretty well covered?

A. Well, there was one matter that was brought up limiting the right I had to sell land on which irrigation water could be furnished. That was definitely in the contract, not only a verbal understanding between the Development Company and the District, but it was part of the written contract, that I could not sell land, and I may not be exactly clear on the phraseology, but it was something to this effect: "That land beyond the services of the present irrigation system could not be sold to a purchaser who required irrigation water from the present irrigation system, excepting the purchaser could waive that right if he wished to irrigate the land by other means himself"; by that, either drilling a well, or extending a pipe line to existing irrigation facilities if water could be furnished to him from that facility.

(Testimony of C. Marc Miller.)

Q. Then Mr. Reiersen was in error when he said he thought that was simply a gentlemen's agreement? It was really a part of the contract itself?

A. Well, Mr. Reiersen, I think—yes, he was in error. I [928] don't think it was intentional; I think Mr. Reiersen had in mind a little more than was in the contract; I could not sell the land without going to them, and as a practical matter, the purchaser wouldn't buy the land unless he knew that water could be furnished there.

Q. Now, is it a fact that the District had in contemplation and the Priest Rapids Development Company had in contemplation the sale of these lands in such a manner that first would be sold those lands that could be served by the existing facilities of the District, and then later the lands could be sold by extension of the facilities of the District?

Mr. Powell: I object, as going beyond the day of taking, if your Honor please. I understood we were chopping this matter off as of the day the properties were taken.

Mr. Ramsey: I don't assume there would have been any sale or extension of the facilities after the date of taking.

The Court: I'll overrule the objection.

A. We tried to sell the land that a purchaser wished. It is awfully hard to guide a purchaser on the purchase of land, but we would take a purchaser through the District and if he selected a tract of land, my first operation would be then to go to the Irrigation District to see if [929] water could be furnished that land. Many times the land was re-

(Testimony of C. Marc Miller.)

moved from the irrigation system, and water could not be furnished to it. I would then at the instance of the district try to sell the land where the water could be furnished.

Q. Then would you say it was the purpose of the District and the Development Company to first sell and locate the settlers on lands that could be served from the then existing facilities of the District?

A. Yes, that was forced upon us, afterwards. When we first entered into this contract it was assumed we would soon have water to furnish practically all of the land within the District.

Q. The plan after the sale of the land that could be served by the then existing facilities of the District was to extend the facilities so as to make available facilities for the irrigation of other lands?

Mr. Powell: If we're charged with the burden of extending the facilities, we should get the benefits of it. I renew my objection. Counsel is trying to imply that the entire burden was upon the power plant and the irrigation facilities.

Mr. Ramsey: I'm just trying to inquire into what the plan was as between the District and the Development Company in the marketing of the lands. [930]

The Court: The question is leading, I think.

Mr. Ramsey: I think unquestionably it is.

The Court: Although no objection was made on that ground. I think he may inquire into the arrangements. I'll overrule the objection.

(Whereupon, the reporter read the last previous question.)

(Testimony of C. Marc Miller.)

A. Not only extend the facilities, the present facilities were not proper. They had to be changed considerably, and the plan, the latest plans, were not only the extending of the facilities, but the installation and erection of a new pumping plant and additional irrigation facilities of the District.

Q. Now, Mr. Miller, during the year 1942 what was the situation out there with regard to a sufficiency of water in the lower end of the canal, the District canal?

A. Well, at the lower end of the canal there was water available to the land which was under cultivation there, but there was no additional water available for additional land at the lower end of the ditch or at other places throughout the District. The situation at the end of the ditch is like at the end of many ditches; the water might be available down there for certain times during the year, but it might not be available to it other times during the year, so it wouldn't pay a man to farm the land, the [931] District couldn't allow him to farm the land, because they might not be able to produce water there at certain times during the crop season.

Q. Was there any of the farmers served by the facilities of the District at the lower end of the ditch or elsewhere who found it expedient to reduce their irrigated acreage by reason of lack of water?

A. Well, I can cite one tract of ground that we sold, and I believe it was sold in 1941. I am referring to the tract of ground that was sold to—one was to Ira Heyer; he bought two tracts down there.

(Testimony of C. Marc Miller.)

He bought one five acre tract of land; the District was of the opinion they might be able to furnish water to this tract, and they did furnish water one year, but it was not successful, and he didn't farm it after that. It had not been farmed for a long time, and he purchased the land and he put water on it.

Q. But you say it wasn't successful?

A. But it wasn't successful.

Q. Do you mean by that that the farming operation was not successful?

A. I mean I think the principal reason it wasn't successful is he couldn't depend on water there.

Q. Uncertainty as to whether he would have water as needed on the tract? [932]

A. That's right.

Q. Now, where was that tract located with reference to the lower end of the canal?

A. It was at the very end—not the very end, but within a half mile of the end of the canal.

Q. And as I understand your testimony with regard to water in the lower end of the canal, there were times when there was water in the lower end of the canal, but it couldn't be depended upon throughout the irrigation season?

A. Yes, sir. May I explain that? It could be depended upon by those who had been using the water, but it couldn't be depended upon for additional acreage.

Mr. Ramsey: I think that's all.

(Testimony of C. Marc Miller.)

Cross-Examination

By Mr. Powell:

Q. Mr. Miller, you were limiting the sales of the property at the time, that is, since your option was entered into, to the sale of such lands as could be furnished water with the existing facilities of the District, isn't that right?

A. That is right, excepting where the purchaser would make other arrangements, or did not use water on the land.

Q. I see. Well, I meant such lands as were to be irrigated from the irrigation system.

A. Yes. [933]

Q. At the time you made these sales you didn't make them by making the representations that there would be a new system installed, did you?

A. In the very first part of our contract we did expect that there would be water available. If you remember, we had an application to the PWA or the WPA for a loan which would have rehabilitated the entire irrigation facilities, as well as the power plant, and that loan was approved by the authorities of the WPA and at that time many of our prospects purchased anticipating that water would be furnished through that source on the land.

Q. That situation, however, did not exist in '43, did it? A. No, it did not.

Q. And at that time, and before '43, immediately before '43, you were not selling any land with the representation that there would be a new irrigation system installed, were you?

(Testimony of C. Marc Miller.)

A. No. We did, however, show land, and I am referring to the land above Roberts' land, where we anticipated that there would be an additional pumping plant and additional facilities installed.

Q. That was the plan that you referred to, as to the extension of the existing facilities?

A. Part of the plan, yes.

Q. Now, the purpose of the colonization that was mentioned [934] in the contract, Mr. Miller, was to get farmers to come in and farm the land, wasn't it?

A. Yes, sir.

Q. The colonization that is referred to isn't the kind that is there now, was it? That is, you didn't have the present plan that is there now in your contract?

A. You mean the government?

Q. Yes, the plan of the government.

A. Lord, no; we had no anticipation of that.

Q. And the 600 acres you referred to were sold over a period of about four years?

A. Yes, sir.

Q. And part of that was not farm land?

A. Part of it was not farm land.

Q. About how many acres?

A. A very small part of it, I would say, oh, 60 or 70 acres of it—no, no, one 80 acre tract alone was not farm land.

Q. That was grazing land?

A. That was grazing land; maybe 150 acres of it was not farm land.

Q. So there would be about 450 acres of farm land?

A. Yes.

(Testimony of C. Marc Miller.)

Q. And do you know whether all that property took water from the canal? [935]

A. No, it did not. Some of those tracts of ground pumped by well.

Q. When this contract came up for renewal in 1943, the original contract expired, I believe, March 3, 1943?

A. I think that is right.

Q. And there is no schedule attached to the exhibit, although it is referred to in the exhibit, plaintiff's exhibit "B," there is no schedule attached to the exhibit although there was on the original contract, was there not?

A. I don't know which you're referring to, Mr. Powell.

Q. B is the March 13 contract.

A. Yes, there was an exhibit attached to this, which was the land then belonging to the District on which there were no encumbrances.

Q. Well, there were two schedules, were there not, one showing irrigable and the other one non-irrigable lands?

A. That's right.

Q. Do you recall the acreages?

A. The total acreage in that contract?

Q. No, the acreage of irrigable and the acreage of non-irrigable.

A. At that time, I don't know, they changed so, I don't remember what the original acreages was. I am trying to remember. I don't believe the original acreages was over 3,000 acres. [936]

Q. Of non-irrigable?

A. Of all the land.

(Testimony of C. Marc Miller.)

Q. The original contract, that was the original contract of January, 1939, wasn't it? A. Yes.

Q. And then as the *country* treasurer issued deeds on foreclosure of assessments you acquired additional lands under your contract?

A. Yes, sir.

Q. You don't know how the land was divided between irrigable and non-irrigable?

A. We divided that in 1943, and we arrived at the exact acreage then. The acreage prior to that I don't know, and we never compiled those figures.

Q. What was the acreage in 1943?

A. It is stated in the contract. I don't remember. If you have the contract introduced in evidence I think that is in there.

Q. I don't think it is, Mr. Miller. The contract you referred to was the one of June 29?

A. Yes, sir. This contract contains 1615.46 acres of land which was considered irrigable. This contract also includes 8791.70 acres of land which was considered not irrigable.

Q. The total of the land covered by that contract, then, is [937] approximately or slightly over 10,000 acres, isn't it?

A. Yes, sir. I might add that subsequent to that contract there were a matter of small acreages the title reports showed did not belong to the District, which were then excluded from this contract. I believe there was one section of ground belonging to the State of Washington that was excluded. I believe also that the original contract included part of

(Testimony of C. Marc Miller.)

the old town of White Bluffs, which was excluded, although I might be wrong as to the last.

Q. Then Mr. Reiersen has given us the District owned lands at the time of the taking as 10,165.27 acres. Is that substantially correct?

A. I would think so.

Q. And the District land he referred to there is the District land covered by your contract?

A. Yes, sir.

Q. And that property was within this Hanford Engineering Works area?

A. Yes, sir.

Q. And was taken by the government?

A. Yes.

Q. You and the directors knew when you entered into the June 29 contract, did you not, that the government would take this property? [938]

A. We anticipated that they would, because they had already filed an intention of taking the property.

Q. When the contract recites the fact of assessments of land you didn't anticipate it would be assessed?

A. No; as a matter of fact I believe in addition to that there was an understanding between the Development Company and the District there would be no water furnished to this land in 1943.

Q. When the government took this property did they take it as dry land, or irrigated land?

A. Well, they took it as land within the Irrigation District.

(Testimony of C. Marc Miller.)

Q. Well, was it appraised as dry land, or farm land?

A. It was appraised as irrigation district land.

Q. Well, I don't think that quite answers my question.

A. Well, it is a very hard thing to answer, Mr. Powell. It was appraised at the fair market value of irrigation district land, based on——

Q. That I believe is a conclusion, Mr. Miller, and I move to have it stricken.

Mr. Ramsey: Well, I represent to the Court that the entire line of questioning is calling for a conclusion of the witness on something that he's not qualified to testify on anyway, as to how the government appraised the land, unless he further qualifies him.

Mr. Powell: Well, that may be true. I'll not [939] pursue it further.

Cross-Examination

(Continued)

Q. How much did the government pay for this 10,000 acres of land?

A. That was purchased in several different tracts. They did not appraise it in total, they appraised it by small tracts. I can give you that in round figures, Mr. Powell, but I can't tell you exactly what they paid for this land unless I take all my tract numbers and total it.

Q. You haven't done that?

A. No, I haven't.

(Testimony of C. Marc Miller.)

Q. Mr. Reiersen has given us the figure of \$49,000.00; is that substantially correct?

A. I believe that is substantially correct. I did not know he had given that figure. I wasn't here when he testified.

Q. Now, as part of this plan of improvement of the irrigation district properties or facilities, Mr. Miller, wasn't it contemplated also that the power canal would be enlarged and the power plant increased to capacity?

A. Yes, there was considerable discussion on that, and at the time when the decision was made to do the work at the power canal, I somewhat objected to the expenditure of funds up there. I would rather have had it spent on the irrigation facilities so that we would have additional [940] land for sale. It meant that our whole operation was practically held in "suspenders" until they could get the additional water on land for us to sell.

Q. You did spend quite a lot of money, though, in trying to colonize the property?

A. Yes, sir, I had an associate with me by the name of J. G. Adams, who spent his entire time in the Priest Rapids valley. I, however, spent about half my time, not necessarily in the valley, but over the Northwest, trying to bring settlers into the area. I made trips to Utah several times trying to bring farmers from that area into the district.

Q. And in 1943 when you were negotiating for the renewal of the contract where were you employed?

A. I was employed by the Army Engineers.

(Testimony of C. Marc Miller.)

Q. In what capacity?

A. I was assistant project manager in the Seattle office, handling the acquisition of land for the Army.

Q. And when this project started you left that employ, did you? A. Yes.

Q. And took care of your interests in the Hanford area?

A. For two reasons. My associate, Mr. Adams, had been very sick, and he died about that time, and it was necessary for me to leave the Army in order to take care of my [941] interests in the Priest Rapids valley.

Q. And subsequently you were employed as an appraiser by the Department of Justice?

A. Yes, sir.

Q. That was after you settled your cases over there? A. Yes.

Q. When you settled your cases, Mr. Miller, you didn't get a deed from the Irrigation District, did you? A. On some of the tracts I did.

Q. On the majority of the tracts did you?

A. No. On the first tracts that we settled by direct negotiation I secured a deed from the Irrigation District and at the same time that I received a deed for those tracts, if there was contiguous property in one or two instances I acquired additional land that was included in the latter purchase, but the land was acquired by the government through condemnation action.

(Testimony of C. Marc Miller.)

Q. And in the settlements made the petition was signed by both you and the District, was it not? That is, I mean you did not get a deed and then sell it to the government, did you?

A. Yes, I did.

Mr. Ramsey: I submit to the Court this is improper cross-examination. It is improper for any purpose. When the government files a declaration of taking upon land it [942] isn't necessary that the parties exchange deeds. They're frozen in status quo. The interests of the parties are compensated for by order of the court. If he did go out and get these deeds they were useless.

The Court: I think I'll sustain the objection to further line of inquiry on this.

Mr. Powell: Well, I'm inclined to think you're right, your Honor. The whole matter is immaterial and I objected to it. The only purpose is that counsel may contend the contract showed an interest in the property as of the date the property was taken. I want to clarify that point to show that it was actually District property at all times, and not in the status——

The Court: Well, all that's been shown in the records so far is a contract to the Development Company, and I think he said there weren't deeds except in some instances.

Mr. Powell: The contract provides for deeds, and I want to show none was given under the contract.

Mr. Ramsey: The objection is interposed that all there is is an option to buy.

(Testimony of C. Marc Miller.)

The Court: You've got a contract——

Mr. Ramsey: Yes, which provides that upon payment of certain sums of money the District will execute a deed to the Priest Rapids Development Company. The government [943] comes along after that option is given, before the deal is closed, and files a declaration of taking. There the parties are with whatever interests they have, the right of the District to receive the sums under the option, the right of the Development Company to participate in the distribution of funds.

The Court: I think it is shown there was a contract and then the government took it. If they claim there was a deed prior to the taking it seems to me it is up to them to show it.

Cross-Examination

(Continued)

Q. Mr. Miller, prior to the taking of the property you were selling the property at the rate of about 100 a year?

The Court: 100 acres?

Q. 100 acres, excuse me.

A. Well, it would average out that way, Mr. Powell.

Q. I mean lands irrigated from the canal, or irrigated lands, let us say?

A. It would average out that way, but as a matter of fact the principal sales were made in 1940 and '41. In '42 there were very few sales made.

(Testimony of C. Marc Miller.)

Q. Now, as a matter of fact, wasn't the Priest Rapids Development Company actually the selling agent for the irrigation district?

Mr. Ramsey: Now, I submit to the Court that the [944] contract between the District and the Priest Rapids Development Company provides and expressly sets out under its terms in the exhibit here in this action that the Priest Rapids Development Company was not the selling agent.

The Court: Yes, I think the contract speaks for the arrangement here.

Mr. Ramsey: It is objected to as attempting to vary the terms of the written instrument.

The Court: The objection will be sustained.

Cross-Examination

(Continued)

Q. There was sufficient water in the canal, was there not, to irrigate more land than was actually under irrigation?

A. Yes, in certain localities there would be, I believe. The Directors could tell you that better than I could, but I believe there would be water available for certain lands at certain locations, not all the way through the District; certain parts of the District.

Q. And wasn't there also a plan discussed to reline the canal? A. Yes.

Mr. Ramsey: Well, now, if the Court please, if counsel is going into the proposition of relining 16 or 20 miles of the canal with concrete, I certainly object.

(Testimony of C. Marc Miller.)

The Court: I'll sustain the objection to that.

Mr. Powell: My point is, if your Honor please, and I don't want to pursue this, or argue with your Honor, but the evidence shows the canal was running full. Counsel has contended there were all these lands that were going to be irrigated. There was a lot of water to irrigate these lands. It is only for the purpose of showing there wasn't additional burden on the power plant.

Mr. Ramsey: Does counsel propose to show he could concrete this canal at thirty or fifty dollars a cubic yard, and then there would be no burden on the power plant? It would have taken five million dollars to concrete line that canal.

Mr. Powell: We wouldn't fill it with concrete.

The Court: I'll sustain the objection.

Mr. Powell: All right, your Honor.

Cross-Examination

(Continued)

Q. Now, Mr. Miller, at that time were there improved—between '40 and '43 were there improved farms changing hands rapidly in the Hanford area?

A. Not rapidly. There were a few, very few sales. There were some sales, but very few.

Q. Very few, of the improved farms?

A. That's right.

Q. And they were actually—did you have any listed? [946]

A. Yes, about four or five listed for sale.

(Testimony of C. Marc Miller.)

Q. Now, Mr. Miller, when your contract was made June 29, 1943, were the farmers gone out of the area?

A. Well, it is hard to say just what date they left. You say June, 1943; there were still some farmers in the district, I believe. About that time they were leaving, and there was a discussion as to whether they would be allowed to harvest some of their crops that year.

Q. Weren't they ordered to leave not later than July 7, 1943?

A. That's right, but you're in June, now.

Q. That's right, but June 29 was about the date the order came out, wasn't it?

A. Yes.

Q. And did you have at that time any prices from the government on the land being included in your contract?

Mr. Ramsey: I object, if the Court please, as being incompetent, irrelevant, and immaterial.

The Court: Overruled.

A. That is very hard for me to answer, Mr. Powell; I don't know. About that time the negotiator for the Army Engineers came to me on several tracts of ground. You know, they appraised it by individual tracts, and he came to me on some lands, and I believe some of it was included in this contract. I'm not sure. It was about that time. They might have come there earlier or later. [947]

Q. Work had been started on the project and was moving forward substantially at that time, wasn't it?

A. Yes.

Mr. Powell: That's all.

(Testimony of C. Marc Miller.)

Redirect Examination

By Mr. Ramsey:

Q. Now, Mr. Miller, on this figure of \$49,000.00 or somewhere in that neighborhood——

A. Yes.

Q. —— that you settled with the government for, as to lands covered by your option in the Priest Rapids Irrigation District, was that settlement figure predicated upon government appraisals, or upon your own figure that you set up for settlement?

A. It was a negotiated settlement, Mr. Ramsey.

Q. Now, you stated that after you had settled with the government as to the properties which you had and the interest in the properties which you had in the Priest Rapids Irrigation District, you became an appraiser for the Department of Justice. Prior to the time that you were hired by the Department of Justice as an appraiser, had you appeared in the trial of any cases as a witness for the land owner?

A. Yes, I did. I appraised for several of the land owners in the District, and I testified in this court as to valuation for the property owners, the land owners, in [948] the District.

Q. On numerous occasions? A. Yes, sir.

Q. So that you were a land owner in the irrigation district, you appeared as an appraiser and value witness for the land owner in the District, and you also served as an appraiser and have fixed value on lands in the District for the government?

A. Yes, sir.

(Testimony of C. Marc Miller.)

Q. Now, getting back to this classification of lands made under your contract, counsel referred to that as irrigable and non-irrigable. By the term "non-irrigable" was it intended to classify those lands as not being susceptible to irrigation?

A. Those lands were divided that way for several reasons. One reason was because the land was not worthy of irrigation.

Q. All of the land, or a portion of it?

A. A portion of the land. Part of the land was classified that way because it was too high in elevation to irrigate from the present facilities of the Irrigation District. I believe part of the land was also classified that way because it was beyond the irrigation facilities of the District, and there was considerable land in the sand dune area and in the rocky river bottom area of the north [949] end of the District which was classified as non-irrigable.

Q. As an over-all classification of non-irrigable land, then, was included those lands which were beyond the existing facilities of the District to irrigate at that time, that is, there was no laterals or pipe lines that extended out to where service could be given to the land?

A. That is right.

Q. And you did not intend by that classification to indicate that all of the acreage was not susceptible for use as irrigated agricultural land if the facilities of the district were extended to put the water on there?

A. That's right.

Mr. Ramsey: That's all.

The Court: Any further questions?

Mr. Powell: That's all, your Honor.

The Court: That's all, then, Mr. Miller.

(Whereupon, there being no further questions, the witness was excused. [990])

L. E. KURTICHANOF

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Where do you reside, Mr. Kurtichanof?

A. Portland, Oregon.

Q. And what line of work are you engaged in?

A. I'm an electrical engineer in the independent practice.

Q. Do you maintain offices? A. I do.

Q. For the practice of your profession?

A. I do; I have for the past twenty four years.

Q. And where are those offices located?

A. At the present time in the Lewis Building.

Q. Do you hold any degrees as an engineer?

A. I am a graduate of Oregon State College, class of 1902, with the degree of Bachelor of Science in Electrical Engineering.

Q. Do you belong to any organization of engineers or electrical engineers?

A. I'm a fellow of the American Institute of Electrical Engineers. I'm also a life member, charter member of the Professional Engineers of Oregon.

(Testimony of L. E. Kurtichanof.)

Q. Are you licensed to practice your profession?

A. I have a license to practice in the States of Oregon and Washington. [951]

Q. Mr. Kurtichanof, have you ever appeared as a witness in cases involving valuation of electrical generating plants, transmission lines, and things of that character?

A. I have.

Q. On how many occasions?

A. Well, on three occasions in the past year.

Q. And what were those cases?

A. Two in this court; first, in the case of Benton County Public Utility District against the Pacific Power and Light Company, involving the areas between Prosser and Kennewick inclusive; one in Cowlitz County, Washington, in the Superior Court of the State of Washington; one in the case of the Klickitat County P. U. D. against the Pacific Power and Light Company, in this Court.

Q. Those two occasions, Mr. Kurtichanof, were condemnation cases instituted for the purpose of acquiring the properties of the Pacific Power and Light Company by the PUD'S?

A. That's right.

Q. And involved the valuation of the facilities taken over?

A. That's right.

Q. In the practice of your profession have you supervised construction of electrical installations?

A. I have.

Q. And to what extent? [952]

A. Well, quite a broad experience in design, construction and operation of steam and hydro-electric

(Testimony of L. E. Kurtichanof.)

power plants, substations, transmission lines, underground lines, distribution lines of all kinds; industrial plants.

Q. Have you acted in an advisory capacity and are you now acting in an advisory capacity to any organizations or public utility organizations or cities or irrigation districts or anything of that character involving these features?

A. Well, just at the present time I have some work on for the Lincoln Public Utility District, operating in the vicinity of Newport, Oregon. I also have an industrial plant in the city of Portland that is being remodeled. I have under way another contemplated condemnation case.

Q. And I believe you said that you have been engaged in this type of work for the past twenty-four years, did you say?

A. Well, it is longer than that. I've been in private practice for the past twenty four years, nearly twenty four; it will be twenty four years next month.

Q. Prior to that what did you engage in?

A. I have worked for privately owned utilities, industrial plants, ship-building concerns, mining concerns, and the like, and a cement manufacturing industry.

Q. In an engineering capacity? [953]

A. That is right.

Q. Now, Mr. Kurtichanof, are you familiar with the hydro-electric plant of the Priest Rapids Irrigation District, and the power canal and transmission line of the District? A. I am.

(Testimony of L. E. Kurtichanof.)

Q. And when did you first make an investigation of those properties?

A. I first appeared on the field about August 7, 1943, and spent practically all the time until about September 24, with the exception of going back and forth on week-ends. Some week-ends I stayed over, as long as two weeks at a time here.

Q. You say you spent practically all of the time; do you mean in the examination of those particular properties?

A. Yes, and in the search for records pertaining to these properties.

Q. And what was the occasion of your making the investigation of those properties during that period?

A. I was asked by the District Office of the Corps of Engineers, United States Army, about the middle of May to come up and discuss certain phases of a project being undertaken then which is now known as the Hanford project. At that time it was contemplated that I should make an examination of additional properties such as those [954] owned by the Pacific Power and Light, as well as the presently discussed facilities.

Q. And going now to that discussion, were you employed to make an examination of these properties?

A. Yes; although the final contract was not signed by the division engineer in San Francisco until early in September, I took the assignment under a verbal arrangement and went to the field for the first time on August 7.

(Testimony of L. E. Kurtichanof.)

Q. Your examination was made for what purpose, Mr. Kurtichanof?

A. My assignment was to determine value of the property, but without strict definition of the word value, and it remained for me to define it in my own way of thinking.

Q. Now, for the purpose of determining the value of those properties, what investigations, if any, did you make other than a physical examination of the properties, if you did make such physical examination?

A. I did make the physical examination, and my conception of the determination of value was that a number of elements had to be given consideration. One was that of determining, if possible, the historical cost or the actual book cost of the property in question, furthermore to make estimates of depreciation retirements. Two was to make an estimate of reproduction cost new and determine the depreciated condition. Three, I should try to determine [955] the earning value of the property. Another, the market value of the property; and five, any other factor that would have a bearing on such determination.

Q. Now, you had in contemplation, then, the inquiry and investigation along these five lines?

A. That is right.

Q. Were you able to determine the historical book cost of the property? A. I could not.

Q. Then the second field of investigation, I believe, was reproduction cost less depreciation?

A. That is right.

(Testimony of L. E. Kurtichanof.)

Q. Were you able to determine that?

A. I did.

Q. The third field of investigation which you set up, I believe, was the earning capacity of the property, or the earning value of the property?

A. Yes. I made certain assumptions and arrived at a certain conclusion based on those assumptions.

Q. Were you able to obtain any data relative to the earning capacity or value of the property?

A. I obtained some data, yes, from records of the District, from records of the Pacific Power and Light Company, and other places where I could get records that were dependable. [956]

Q. Now, I guess I'm lost; what was the fourth field that you intended to investigate?

A. Market value.

Q. Were you able by investigation to determine what the market value of the property might be?

A. Due to the peculiar nature of the property it was my conclusion that I could not determine a market value.

Q. Now, your fifth field, I believe, was any other factor which in your opinion would have a bearing on the actual value of the property. Under that heading did you make any investigation?

A. I picked up all the information I could relative to the operations of the plant, giving consideration to its past performance and its expected performance, based on its experience.

(Testimony of L. E. Kurtichanof.)

Q. Did you examine into the history of the properties from the date of their construction and the actual financial history of the properties?

A. I made search for a history of the entire project while I was in the field. I gathered fragments here and there, and the most reliable history I got was through the courtesy of Mr. Hall, whom I contacted here, whom I was informed was acting consulting engineer for the District.

Q. That is the Mr. Hall who appeared here as a witness for the District? [957]

A. Yes. I was supplied by Mr. Hall with a history written by Mr. Moulton, of the firm of Moulton & Powell, I believe in Kennewick. Later I called on Mr. Moulton at his office in Kennewick and discussed certain features of the project. I also obtained certain fragments of history from Mr. Sanford, who at one time was an officer in the—I believe the Black Rock Irrigation and Power Company, and who is now connected with the Pacific Power and Light Company.

Q. Were you able to have access to the records of the District as to the actual production of power by the power plant throughout the time that it was in the hands of the District?

A. Yes. My first visit to the office of the District I think I saw Mr. Reiersen. He turned me over to Mr. Joe Grell, who at that time was manager in between times. He was extremely busy at that time of the Army project. He gave me the courtesy of

(Testimony of L. E. Kurtichanof.)

the office, supplied me with a key, and permitted me to go through all the maps and drawings and so on, like the letter file, anything of that nature. I also visited the power plant and the pumping plant to get such operating records as they would have. From that I found that the records were more or less discontinued, also that they were scattered between the offices of the District at White Bluffs, between the power plant, and between the pumping plant. On further inquiry I found [958] that the figures that were of interest to me were maintained in the offices of the Pacific Power and Light Company, because the operators at both the pumping plant and the generating plant had frequent contact by telephone and made reports to the power dispatcher of the Pacific Power and Light Company at Pasco. Upon later investigation I found company records such as I felt I needed at the Pacific Power and Light Company, and through their courtesy I was supplied with them.

Q. So that you had made available to you the records of the District at the District office, the records of the District at the power plant, the records of the District at the pumping plant, and also had made available to you the records kept by the P. P. & L. Company?

A. Records that were pertinent to the production and disposal of power, yes.

Q. Now, about what period of time did you spend in a physical examination of the properties referred to, Mr. Kurtichanof?

(Testimony of L. E. Kurtichanof.)

A. About a total of about twenty six days were occupied in the field.

Q. That was all spent in the actual physical examination of the power canal, the power plant, the transmission line and the pumping plant, is that correct?

A. And the examination of records and making such notes as [959] were necessary.

Q. Yes. Now, in the examination of the power canal, explain to the jury and the Court just what steps you took to examine and familiarize yourself with the replacement cost of that canal, other than the inquiries that you have mentioned.

A. Well, to begin with, when I undertook the job from the District Office of the Corps of Engineers they supplied me with some drawings, photostatic prints, and one thing and another presumably of this project. These included drawings, preliminary drawings apparently, and various steps in the development of plans of structures or one thing and another. Among them was a topographic survey of the route that this canal covers. I first covered this route on foot, made such observations as I could. Later I obtained the help of a surveying crew from the Army Engineers, together with a boat, went into the canal, measured its sections from the intake of the river to the power house, both in the old channel and in the cut-off channel built in about '41. At the time of this examination we made note of the classification of soil, such as gravel, boulders, solid rock, and so on, and noted obstructions in the

(Testimony of L. E. Kurtichanof.)

channel which made it ineffective to deliver the designed quantity of water. It impaired the generating capacity of the plant and all [960] such matters as that took into consideration.

Q. In your examination of that canal did you make any cross section drawings or anything of that character representing the conditions which you found in the various sections of the canal?

A. I did not do it personally, but the surveying crew under my direction did it. I attended them in all their activities except in making the final sketch.

(Whereupon, map of cross sections of power canal was marked Plaintiff's Exhibit No. J for identification.)

Direct Examination
(Continued)

Q. I hand you, Mr. Kurtichanof, plaintiff's identification "J", and ask you to identify that.

A. This is a record of our observations as to cross sections of the canals, made under my direction by a surveying crew borrowed from the Army Engineers, Hanford Project.

Q. Now, I note various points on the chart here which apparently represent cross sections.

A. That is right.

Q. At what distance along that canal did you take cross sections?

A. At various stations as identified on the section. Station "O" plus "OO", south bank. That is the section of intake and of cut-off canal. Then

(Testimony of L. E. Kurtichanof.)

the next station was [961] "Original canal opposite junction with cut-off", and so on; various irregular stations where the cross section would change.

Q. Your cross sections, however, identify the point on the canal at which the cross section was taken?

A. That is right.

Q. And the data that appears thereon is the data that applies to your findings at each particular section?

A. That is right.

Mr. Powell: No objection.

Mr. Ramsey: I haven't offered it, but if you have no objection——

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit "J" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, did you have available for your use in connection with your work and survey work, particularly upon the power canal, a topographic map of the area, prepared by the original builders of that canal and power plant?

A. Yes.

Q. And where was this map secured?

A. I'm not certain as to whether it was furnished me by the Army Engineers, or whether I obtained it at the office [962] of the Hanford Irrigation District. I think I got it from the Army Engineers. They gave me a large roll, and I did not separate—keep them separate from subsequent information.

(Testimony of L. E. Kurtichanof.)

(Whereupon, topography map of area of power plant was marked Plaintiff's Exhibit "K" for identification.)

Direct Examination

(Continued)

Q. I hand you plaintiff's identification "K"—Mr. Powell, I suggest that if you want to examine this it probably will be necessary for us all to look at it.

The Court: If you will have him identify it I'll recess.

Q. And ask you to identify the identification.

A. It bears the title "Hanford Irrigation and Power Company, H. R. Owens, Engineer; subject, Priest Rapids Topography above canal, drawing number B-172" and this is the drawing that I had in the field with me when examining the property.

Mr. Powell: Mr. Kurtichanof, did you check this contour map generally to be sure that it complies with the contours? You did not make the map? It is about 40 years old?

A. No, I didn't make the map. I used it for just my personal information at about the time that existed at the time this map was prepared, since involved in that was a [963] natural channel of the river, high water channel or lagoon, as it might be called, which was subsequently used as a portion of the power canal.

Mr. Powell: I don't know, then, if this would be material. If that is the only reason I have no ob-

jection. If there is any other purpose I would like to know what counsel has in mind.

The Court: Well, we'll recess now for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Powell: No objection to the exhibit, your Honor.

L. E. KURTICHANOF

a witness called on behalf of the Petitioner, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Mr. Kurtichanof, I will ask you to step down from the witness stand and come here to the table, this exhibit is so big. Now, are you able to indicate on identification "K" the location of the present new intake to that canal?

A. It is approximately in this location.

The Court: You had better mark it, Mr. Kurtichanof.

Q. May I suggest that you mark——

A. Approximate location of new cut-off channel.

Q. Now, we've been having some difficulty, Mr. Kurtichanof, on our elevations here. I'll ask you to examine the elevations as shown on this map, and state whether they are the same elevations that

(Testimony of L. E. Kurtichanof.)

were used by the District in keeping its records, or whether they are the actual elevation?

A. I ran into some discrepancies in elevations upon both, on the topography and on building elevation drawings. However, in my observations of elevations in our survey of the canal we took the gauge heights of the gauges that were in place at the upper end of the intake canal and also at the lower end of the canal, immediately in front of the trash racks at the power house, so we ignored all other elevations.

Q. Now, in the examination of this map, did you find that they used that method of determining their elevations?

A. Oh, yes.

Mr. Ramsey: If I may suggest to the Court, I would like to turn the witness over to counsel in order that he can correlate his testimony with the figures that appear on this map, and also with the figures which Mr. Kurtichanof says he relied on, so we won't confuse the jury.

The Court: Very well.

Voir Dire Examination

By Mr. Powell:

Q. It is my understanding, Mr. Kurtichanof, that when this [965] map was made in 1906 or 1908, that the United States Geological Survey had not established bench marks in this area.

A. I don't know about that, but as is customary on any project where exact elevations are not known, arbitrary elevations are assumed, either

(Testimony of L. E. Kurtichanof.)

zero, or 100, or 1000, and all elevations are referred to the assumed elevations.

Q. And the elevations of the United States Geological Survey notes that are in evidence, and the gauge readings, are assumed to be the elevation above sea level? A. I believe so, yes.

Q. But the elevations shown on this map, "K", are elevations taken from an assumed elevation?

A. They might have been; I can't vouch for that.

Q. What I mean is, that the elevations on the map, identification "K", do not refer to the elevations above sea level?

A. I wouldn't know whether they do or not. I would believe that they do not.

Mr. Powell: I think that is correct, your Honor. This shows 480 feet in one place, and that is substantially greater than the elevations shown on the exhibits we have introduced.

A. It would be my judgment that this could not be tied in to the true elevations above sea level, as established by the Geological Survey. [966]

Mr. Ramsey: However, that would not affect the use of the map in determining the elevation of certain points with reference to the elevation of certain other points on the map? A. That is right.

Mr. Ramsey: I offer in evidence Plaintiff's Identification "K".

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "K" for identification was admitted in evidence.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Now, Mr. Kurtichanof, how long a time did you put in in your examination of the power canal?

A. I can't say. I was examining all elements of the property practically at the same time, that is, I was making observations, and I did not divide the time between the various phases of it.

Q. But you put in twenty six days in the field on the examination of all the properties?

A. That is right.

Q. From your observation of the new intake channel, which I believe the testimony shows was cut in 1941——

A. '41, I believe.

Q. —— did you find that there had been any silting of that [967] channel?

A. Yes, it was practically closed. I would say that it was 75 to 80 per cent closed.

Q. By silting action?

A. By deposit of silt.

Q. Now, from your observation of the canal itself, did you find that silting action had gone on in the canal?

A. There was considerable evidence of it in the vicinity of the spillway channel, where a substantial reef of gravel deposit had been formed, effectively sealing off the flow through the spillway except at considerable—except at water elevations considerably higher than existed at the time of observation.

(Testimony of L. E. Kurtichanof.)

Q. Did you find evidence of that in other places lower down on the canal?

A. To a smaller degree. Somewhere in the vicinity of the upper end of the dump portion of the channel there was evidence that the channel was not cut originally to its designed width, because of solid rock, and at that point, or just immediately above there, there seemed to be some further deposit. Possibly some of it was due to sloughing in of the banks.

Q. From your observation and experience of water diverted from a stream which at times is heavily impregnated with silt and carried at a considerable less degree of fall [968] than the main stream, would you say that a silting process would be a natural thing to expect in this canal?

A. Yes. The matters carried in suspension in the flowing water are dropped as velocity is reduced. The heavier ones, of course, are dropped first, and the lighter ones last, progressively.

Q. Now, you have heard the testimony of work that was done on this canal, and yardage which was removed from the canal in 1939, or '40, or '41, or somewhere along in there. Now, in your opinion, was the yardage removed there entirely new yardage being excavated from the canal, or was it, in part, at least, a deposit of silt in the canal through the years since its construction?

Mr. Powell: Your Honor please, I think I should object to that question. He wasn't there, and couldn't tell.

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: No, but he made a very careful examination into all the factors involved.

The Court: Let's see, will you read the question?

(Whereupon, the reporter read the last previous question.)

The Court: I will overrule the objection. I suppose he could, as an expert, express an opinion.

A. In view of the conditions as I saw them at the time of inspection, I made inquiries as to the degree of maintenance [969] that had been experienced in the past, what methods were used, what quantities were possibly removed, and so on. I formed no opinion as to the quantities removed, nor the effectiveness thereof, except there was certain rock removed at some time or other within the last couple or three years, that is evident, and deposited on the banks of the canal, and it was explained to me that that was part of the rock removed at the time improvements were made both in the cut-off channel and in the original channel, but I of course could not identify them as such.

Q. You, then, didn't attempt to determine what part, if any, of the materials removed later from that canal may have been silt deposited there through the years, and what portion may have been new materials excavated?

A. I think it would have been impossible to determine that.

Q. Now, from your examination of that canal, and from the survey that you made of it, from your

(Testimony of L. E. Kurtichanof.)

study of the topography map of the area and the cross section survey that was made, did you determine the amount of materials that had been excavated in the construction of the canal?

A. I made an estimate of it, yes.

Q. You heard the testimony of preceding witnesses for the District as to the total excavation which they estimated was necessary for the construction of that canal being, I believe, 222,000 yards? [970]

A. Yes, I heard that.

Q. Did your estimate agree with that?

A. Very substantially, as I recall it. My estimate for the excavation quantities on the original canal were as follows: Rock, 26,130 yards; gravel, 173,106 yards, total, 199,236 yards; and in the cut-off, or new channel, my estimate was: Gravel, 17,375 yards; rock 4,444 yards, making a total of 21,819 yards. Thus, for the entire canal with its improvement, my estimate was: Gravel, 190,481 yards; rock, 30,574 yards, total, 221,055 yards.

Q. Wait a minute, I'd like to have those last two figures again. Total of gravel?

A. 190,481.

Q. Rock? A. Rock, 30,574; total, 221,055.

Q. Or a difference of less than 1000 cubic yards?

A. Pardon?

Q. A difference of less than 1000 cubic yards from the estimate of the defendant's witnesses?

A. I don't recall the exact figures testified to previously. This is taken from my field notes of the computation.

(Testimony of L. E. Kurtichanof.)

Q. Now, Mr. Kurtichanof, in estimating the reproduction cost of that canal what did you estimate for the rock work per yard? A. \$1.25. [971]

Q. And what did you estimate for the gravel?

A. 35 cents. I'll correct that. It was 35 cents in the cut-off canal, and 40 cents in the main canal. The reason for it being higher in the main canal, there was some over-haul involved.

Q. Any difference in your figure for the rock work in the main canal and in the cut-off?

A. No.

Q. Or a total cost of reconstructing the canal of how much?

A. Total estimated cost of reproduction new as of September 30, 1943, was \$131,465.00.

Q. Does that include any items other than excavation, that total?

A. Total cost of the canal.

Q. Now, what condition did you estimate that canal to be in or what per cent of depreciation, if any, did you make on the canal?

A. Due to the obstructions as found, impairing its full efficiency, I depreciated it in the amount of 30 per cent, or found 70 per cent condition.

Q. Making a reproduction cost less depreciation of what?

A. \$92,025.00. This depreciation that I have allowed for it, I might explain, is because of the greatly accrued deferred maintenance. If that maintenance had been kept up, then there would have been no depreciation charged [972] against that canal.

(Testimony of L. E. Kurtichanof.)

Q. As one item of that failure to maintain the canal, do you have in mind the condition of the newly cut entrance to the canal?

A. That, and elsewhere in the canal also, because of lack of adequate provisions for taking care of this silting up.

Q. Then if I understand your testimony, Mr. Kurtichanof, your 30 per cent so-called depreciation in the main represents what you estimated it would take to put that canal together with the intakes back into 100 per cent condition?

A. Substantially so, yes.

Q. Now, going on to the power plant itself, state just what investigation you made to determine the reproduction cost of that plant; that is, I'm speaking now specifically of the structures.

A. I measured the quantities involved therein and estimated the cost of labor.

Q. Now, state whether or not you had available the original drawings of the Hanford Irrigation and Power Company of that structure?

A. I had made available to me a number of drawings showing plans, sections and elevations. I took them along with me to see how closely the structure as built conformed to those representations on the drawings. Some of them I [973] found did not conform. One or two sections and part of a plan did conform substantially to it, and I used it as a guide in recording my measurements as found on it, and later computing the quantities involved.

(Testimony of L. E. Kurtichanof.)

(Whereupon, drawing of cross section of power plant was marked Plaintiff's Exhibit "L" for identification.)

Q. I hand you plaintiff's Exhibit "L" for identification, Mr. Kurtichanof, and ask you to identify it.

A. This is intended to represent a cross section through the power house, taken on the center line of one of the water wheel units.

Q. Now, from your examination of the power plant structure there, does that very closely approximate the building as you found it to be constructed?

A. This particular drawing does, yes.

Q. Now, I note that you have super-imposed upon that drawing some lines in pencil. What do they represent?

A. They are my observations as to the ground line existing at the present time, also the line of solid rock on which the building is founded in part. The rock was easily observable from the down-stream side of the power house, and the natural slope of the ground is, I believe, the same as it was at the time this was built, because it extends for a considerable distance both up-stream and [974] down-stream from where the power plant is now located.

Q. Does that cross section indicate the depth to which excavation was made in the rock?

A. Yes. I took measurements from given points on the structure down to the rock level, and thus determined its position with reference to the building.

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: We offer identification "L" in evidence.

The Court: Any objection?

Mr. Powell: No objection, your Honor.

The Court: Admitted.

(Whereupon, Plaintiff's Identification "L" was admitted in evidence.)

Mr. Powell: I might ask the witness two things. Does it show the generator?

A. No, this is only pertaining to the structure.

Mr. Powell: Oh, I see, it doesn't show the water wheel either?

A. No.

Direct Examination

(Continued)

Q. Now, with reference to the structure there, Mr. Kurtichanof, did you check and measure that structure for the purpose of determining the amount of concrete required for its erection?

A. Yes, for all purposes which I thought were essential in [975] determining the quantities of excavation, the classification of excavation, the classification of the soil, the quantity of concrete involved, and other materials.

Q. And from your investigation and observations there what did you determine to be the amount of rock that it was necessary to excavate for the erection of that building?

A. The amount of solid rock was estimated at 3292 cubic yards; gravel, 3700 cubic yards.

(Testimony of L. E. Kurtichanof.)

Q. Does that embrace all of the excavation that you believed to be necessary from your observation and investigation there, for the structure?

A. Yes, including the structure and the tail race.

Q. Now, what did you estimate to be the cost, as of September 30, 1943, of the solid rock excavation per cubic yard? A. \$1.25.

Q. And the cost of excavating the gravel?

A. 50 cents.

Q. Making a total cost of the two items for excavation how much?

A. I haven't computed it that way.

Q. How much concrete did you estimate would be required for the construction of that building?

A. 3520 cubic yards.

Q. And what did you estimate would be the cost of that concrete in 1943? [976] A. \$16.30.

Q. Per yard? A. Per yard.

Q. Was that your figure on re-enforced concrete, or did you have a separate item for the re-enforcement?

A. I had a separate item of re-enforcing mounting to 45,200 pounds, which I estimated to cost 8 cents per pound, in place.

Q. Or a total of how much? A. \$3616.00.

Q. Again? A. \$3616.00.

Q. Did you include as a part of the generating plant structure bar screens?

A. No, that was listed separately as equipment.

Q. Yes. Now, what other items, if any, did you include there?

(Testimony of L. E. Kurtichanof.)

A. A coffer dam and un-watering for the construction of the tail race, which I estimated at a lump sum of \$1000.00.

Mr. Powell: One thousand? A. Yes.

Q. What, then, would be your total reproduction cost of the generating plant structure?

A. I had several other items, Mr. Ramsey.

Q. Well, then, give us those items.

A. They're not very important, but there is a transformer [977] house which has been constructed on the down stream side over the draft tubes, which I estimated at \$1190.00; the machine shop, also built on the down-stream piles, on the up-stream end, I estimated at about \$225.00; windows, \$540.00; doors, \$172.00; plumbing, \$100.00; lighting, \$300.00; furniture and fixtures, \$200.00; crane, \$1750.00, making a total estimated cost of the power house building \$81,278.00.

Q. Now, did you depreciate that?

A. I did.

Q. And to what per cent?

A. To 83 per cent condition.

Q. 17 per cent depreciation?

A. That is right.

Q. Making a depreciated—

A. Depreciated value of \$67,468.00.

Q. Now, this matter of this crane; what value did you say you put on that? A. \$1750.00.

Q. How did you fix that value?

A. By getting prices from manufacturers. At the time I was designing in part and buying the

(Testimony of L. E. Kurtichanof.)

equipment for a plant just about the same size as this. I originally designed it to contain two units, one of 1500 and one of 500 kilowatts, but just before we closed the contract for the [978] equipment war came on, we couldn't get those, and later we acquired through the priorities division of the proper government authority two smaller units, 750 K.V.A. that were allocated to the Northern Idaho Rehabilitation and something or other project in Idaho, so I had to re-design the plant to contain three units of 750 kilowatts instead of 2000 as originally planned. The structure was about the same width, the crane span was about the same, and the load capacity was the same, ten tons, and that was bought for about \$1150.00. I believe, plus a ten ton chain block for \$300.00 and some odd dollars, and an estimate of the cost of installing it, which made a total of \$1750.00.

Q. So your value here ascribed to the crane was predicated upon actual price check?

A. At that time.

Q. For a comparable crane in 1943?

A. '43.

Q. With the chain block and cost of installation added?

A. Right.

Q. Now, in your examination of the power plant structure did you find that there had been any over-building in the structure?

A. Well, the project as built was designed to accommodate four additional units, and portions of the structure and sub-structure were built originally in 1907 and 1908, [979] whereas if the structure had

(Testimony of L. E. Kurtichanof.)

been designed for only the two units it contained, it would have been of substantially less cost.

Q. Is it possible to use four additional generators in that plant?

A. Not without other improvements. The canal would have to be increased very materially, the diversion facilities would have to be increased, and it would require a major operation on the entire project.

Q. Now, moving on to the generating plant itself, I'll ask you, Mr. Kurtichanof, in your checking of the floor plan of the structure and the installations in the structure itself, whether you had the use of a detailed plan?

A. It was detailed to some extent, to the extent of showing main dimensions of structural members, the spacing of units, I believe, and the head wall, only in part; it did not show the extensions of the head wall upstream, or down-stream, of the main structure.

Q. Did it show the location in the structure of the generators? A. Yes.

Q. Did it show the location in the structure of the transformers?

A. It did of the power house as planned and built originally. Now originally the power house was built to accommodate [980] six transformers along the upstream wall, six transformers of about 450 Kilowatts, I believe, rating, and it is my information that the initial transmission was at 22,000 volts. These transformers served that transmission

(Testimony of L. E. Kurtichanof.)

line. At some subsequent time the line was changed to 66,000 volts, new transformers of larger size were purchased, and installed over on top of the piers over the draft tubes.

(Whereupon, floor plan of power house was marked Plaintiff's Exhibit "M" for identification.)

Direct Examination

(Continued)

Q. I hand you, Mr. Kurtichanof, plaintiff's identification "M" and ask if this is the floor plan to which you have referred in your testimony?

A. Yes, this is.

Q. You checked this floor plan against the structure itself? A. Yes.

Q. In the main, did you find it correct in detail, with the exceptions noted?

A. Yes, the matter of occupancy of the transformer space was about all the difference, and on the down stream elevation this drawing does not show the present transformer structure.

Mr. Ramsey: I offer plaintiff's identification "M" in evidence. [981]

Mr. Powell: I might ask first of the witness where the identification was secured, and is it from a source that would indicate it was authentic?

A. Yes, it came to me either directly from the engineer, who in turn might have obtained them from the district, or from the District itself. I'm not certain.

(Testimony of L. E. Kurtichanof.)

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "M" for Identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, from your examination of the installations in the power house, how many generators did you find there?

A. Two main units, one rated at 900 kilowatts, the other at 1200 kilowatts.

Q. And were these the same units that have been referred to by preceding witnesses?

A. Yes.

Q. One being an Allis Chalmers, and the other being a G. E.?

A. The number 2 generator is of General Electric manufacture, whereas number 1 is Allis Chalmers.

Q. From your examination of the two generating units, what did you determine as to the age of the two units?

A. Well, evidence was obtained that the number 1 generator [982] is the original one installed, and appeared of about 1907, together with the water wheel driving it. Number 2 generator was installed I believe about 1941, that is, put in service in 1941.

Q. Would you say that there was any degree of obsolescence in either of those units?

(Testimony of L. E. Kurtichanof.)

A. Not of appreciable moment in the case of number 2. There is a possibility of considerable in number 1. One reason for it would be that there might be some doubt as to whether or not the latest type of steel was used, for instance, in the core. Along in the period of about 1905 to 1910 it was discovered that the addition of silicon to steel improved its magnetic qualities, made it so-called "non-aging." It came into use much later, of course, and it is quite possible that this old generator did not use non-aging steel. That would be one element of obsolescence. In addition, I think there has been material improvement in the art of producing insulating materials used in the windings of the generator armature and field.

Q. Let me interrupt there long enough to ask you this; does the materials that you have mentioned, the insulation materials, have a very definite fixed life span due to use?

A. Not definite, no. It is greatly affected by conditions [983] of service and conditions of load.

Q. Well, let me ask, then, this. Does it have a limited life span under use?

A. Oh, yes, but that span, of course, again is very much affected by the conditions of service and load.

Q. Would the use of the particular unit, particular generator, for a period of forty years or such a matter materially affect the remaining life span of the insulating materials?

A. Normally you would expect that, yes.

(Testimony of L. E. Kurtichanof.)

Q. Now, passing on to the turbines, especially with regard to unit number 1, what did your examination disclose there?

A. From the information I obtained it was found to be what was called by the manufacturer a Triplex unit, and as near as I can determine, that unit was especially designed for this particular application, with the object in view of obtaining highest possible efficiency and rated output through a wide variation in head of water.

Q. Would that be an efficient unit to be used in this sort of a plant?

A. The unit as built is composed of three runners assembled on the same shaft, and a unique inter-connection between the various runners. It is my opinion that this combination, in order to obtain rated output, rather detracts from its possible efficiency if it were designed for only [984] a single runner. It is a Francis type of wheel, and for a specific head, specific performance, the Francis type wheel can be designed for relatively high efficiency, but with this combination interposing, I rather think that had some effect in reducing the over-all efficiency.

Q. In your opinion, would it be as efficient as the propeller type wheel used on the other unit?

A. Well, there again, a simple propeller type wheel can be designed for best efficiency for a specific condition. There are, however, modifications of the type, such as the moveable propeller, which is designed to operate a very high efficiency over a wide range of change in head, but the critical thing

(Testimony of L. E. Kurtichanof.)

about the Triplex is that because of its specific design, and more or less cumbersome design, it would be very expensive compared to units that will be equally efficient at the present time.

Q. In other words, if you were replacing that wheel in that plant at this time, you would be able to replace it with a wheel that would give an equal amount of efficiency at much lower cost than the cost of such a wheel as this?

A. That is true. I doubt if you could get an exact reproduction of that wheel now, except at very great cost, special order.

Q. Now, I'm not going to take time, Mr. Kurtichanof, to check through with you all the items of generating equipment. [985] I'll simply ask generally if your check-up agrees in the main with those items as detailed by Mr. Tinling and the other witnesses?

A. Referring to the power plant particularly?

Q. Yes, the generating equipment.

A. As I recall the testimony, it is substantially the same.

Q. Is there any additional items that you remember there that they did not mention?

A. I didn't remember, or I do not remember, any specific testimony pertaining to the head gates and trash racks as a separate item of cost. I have so treated them.

Q. With reference to the wiring in the power plant, and specifically the 2300 volt feeder system, did you note anything as to the condition of that wiring?

(Testimony of L. E. Kurtichanof.)

A. Yes, I did. The main bus structure and wiring contained therein was of the vintage of the date this plant was built, approximately 1907 or 1908, and was not in any way comparable to modern designs. In addition to that, some of it was installed later, I think for instance, like that to take care of the pump, the 2800 or 3000 gallon pump to serve the Brown Brothers farm, something of that nature, that was put up in a very temporary manner, and in my opinion constituted a real hazard. The wiring, together with associated cut-outs, which were bare, and exposed fuses and all that, was not good grade of construction.

Q. In the main, what was the age of the power plant, the generating equipment?

A. Well, the original plant was built in the period of 1901, so at the time that I observed it in '43 it was about 37 years of age, with the exceptions as noted in the case of water wheel under 2 and generator, unit 2.

Q. What did you fix as the cost of replacing the generating plant equipment, new?

A. My estimate of reproduction cost new as of September 30, 1943, for generating plant equipment was \$155,344.00.

Q. Now, from your examination, did you form an opinion as to the degree of depreciation that should be charged off against those installations?

A. I found the condition in per cent was 69.

Q. That would be a depreciation of 31 per cent?

A. Yes.

(Testimony of L. E. Kurtichanof.)

Q. And the reproduction cost less depreciation on the power plant equipment then would be what?

A. \$106,648.00.

Q. Now, passing on to the transmission line, I assume you handled that as a separate item?

A. I did, but in connection with the power plant there were some miscellaneous items.

Q. Not included in the total? [987]

A. Not included in the figure I gave you. That is merely power plant equipment. I set up my estimates in compliance with the uniform classification of accounts as prescribed by the regulatory commissions, including the Federal Power Commission.

Q. Are you getting into the matter of overhead, or what's also been referred to as——

A. No, but I merely point out that you were asking about the power plant equipment. I have some miscellaneous equipment, such as shop equipment and tools.

Q. Well, can you give us the total of this?

A. There are only four general items, shop equipment and tools, yard lighting system, domestic water supply system and irrigation system, a total estimated reproduction cost of \$7600.00, the depreciated value of \$1832.00.

Q. I assume you have added to all of your items the usual overhead item of legal and engineering and other incidental expenses? A. Yes.

Q. However, we'll pick that up when we include the various items. Now passing on to the transmis-

(Testimony of L. E. Kurtichanof.)

sion line, what did you find the condition of that line to be from your examination of it, Mr. Kurtichanof?

A. Well, it was in very poor condition.

Q. And in what way? [988]

A. It is composed, in most part, of the poles set originally. The poles were untreated cedar, which have been stubbed once, twice, in some cases three times. About two-thirds of the stubs are composed of old poles which had been cut up for stubs, and about one-third of the stubs at the time I observed them were of treated sawn timbers. I don't recollect exactly whether they were merely tank treated, or Pentrex treated, but they were treated in some manner.

Q. What percentage of the stubs had been treated, did you say?

A. About one-third of all the stubs.

Q. What about the other two-thirds?

A. They were untreated cedar poles, which had served as poles, had been taken out of service because of decay at the butt, then cut up into lengths for use of stubs, the remaining sound portion.

Q. Now, you examined the line itself?

A. Yes.

Q. And what did your examination of that show?

A. Well, it showed a, rather an ominous condition, if I might so express it. When it comes to reproducing an article such as the transmission line, here's what I found. The conductor size was not at all compatible with the amount of power that

(Testimony of L. E. Kurtichanof.)

it was required to deliver, [989] or could possibly deliver under the size generating plant existing. The explanation for it must lie in this fact, that at an earlier time, when it was being operated at 22,000 volts instead of 66,000, such cross section was required. Another thing was that it was made of a conductor, a type which is now long obsolete, namely soft aluminum, and I don't think any engineer designing a line to carry 2100 kilowatts, or the capacity of that plant, would use such a conductor for two reasons, first of all, because of its overadequacy in size, and second, because of its obsolete type, which is this, that the conductor strength is so low that it requires spacing of poles at very short intervals. With a modern type of conductor better suited to the duty required of it, one could reduce the cost very materially by reducing the numbers of poles, structures, insulators, and the like, to one half or less of the number which would be required to carry the existing line. I made a comparative estimate of what a modern type of line would cost. I took into consideration the salvage obtainable from salvaging, taking down and salvaging the present conductor, and from that, and taking into consideration all other factors, I determined that the per cent condition was, I believe, about 22—let's see, 23 per cent.

Q. What would be the type of conductor that would be used [990] at the present time, instead of the soft aluminum conductor?

(Testimony of L. E. Kurtichanof.)

A. Well, you would have a choice of a variety. You would have a choice of aluminum with a steel core, you would have a choice of hard copper, you would have a choice of copper weld, either solid or stranded, all of which have the necessary carrying characteristics with much higher breaking strength.

Q. What would be the cost of any of those conductors mentioned as compared with the cost of this soft aluminum conductor?

A. Well, a conductor of size adequate to perform the functions would be very materially less. I have estimates here somewhere, quotations from manufacturers.

Q. So, from your examination, you conclude that to a large degree this line is not only depreciated, but obsolete? A. Yes.

Q. In many characteristics? A. Yes.

Q. And your opinion of the actual condition of that line due to depreciation and the obsolete items mentioned is about 23 per cent of the actual replacement cost of it?

A. The depreciated value?

Q. Yes.

A. Is 23 per cent of an estimated cost new. [991]

Q. Now, what did you estimate to be the replacement cost new of the line? A. \$52,775.00.

Q. And the reproduction cost less depreciation value?

A. \$11,923.00. I wish to explain here, too, Mr. Ramsey, that the figures I have just quoted you are

(Testimony of L. E. Kurtichanof.)

for total transmission plant. Included in that, however, are the land and land rights associated with the transmission line.

Q. That is, the right of way?

A. For which the estimated reproduction cost, furnished me by the Army, is \$400.00; the per cent condition is 100 per cent, and the depreciated value is \$400.00.

Q. And that would be added to the figure?

A. Deducted from that total.

Q. It is included in the total given. Now, as a part of that line did you include the line from the junction down to the pumping plant?

A. Yes.

Q. That is for the entire transmission line?

A. For sixteen miles of line.

Q. Before we leave the transmission line, do you have—are you in agreement with the items testified to by Mr. Tinling that are required on each of the pole structures and the number of poles involved in the line itself? [992]

A. I do not have in mind all of his testimony, but one element that I would like to question is the poles themselves. I believe Mr. Tinling's testimony was that they were Pentrex treated cedar poles. At the time of my observation there were only about three or four Pentrex treated poles on the line. All the rest were untreated poles.

Q. And your investigation was made in August, 1943?

(Testimony of L. E. Kurtichanof.)

A. August and September of 1943. I can give you the exact number from my field sheets of the Pentrex treated poles that were in existence at the time of my observation.

Q. Well, perhaps you had better give us that.

A. There were two of 35 foot length, two of 45 foot length.

Mr. Powell: May we have that again, please?

A. Two of 35 foot length and two of 45 foot length, Pentrex treated cedar poles.

Q. Did you include in your reproduction cost here the cost of setting the poles?

A. Oh, yes.

Q. And back filling? A. Yes.

Q. In your examination of the pumping plant structure, Mr. Kurtichanof, did you have access to the original profile drawing of the Hanford Irrigation and Power Company for that structure, for purposes of comparison? [993]

A. Yes, there was a profile of the discharge line; I believe there were some planned and sectional elevations.

Q. Is this the bureau drawing that you refer to?

A. That is one showing a sectional elevation of the pumping plant.

Mr. Ramsey: I ask that this be marked as plaintiff's "N" for identification.

(Whereupon, drawing of cross section of pumping station was marked Plaintiff's Exhibit "N" for identification.)

(Testimony of L. E. Kurtichanof.)

Direct Examination
(Continued)

Q. I hand you plaintiff's identification "N", and ask you if that is one of the sectional drawings that you had access to for purposes of comparison?

A. It is.

Q. And do you know how you secured that?

A. Either directly from the district, or through the Army Engineers, who in turned obtained it from the district, it is my recollection.

Q. Did you from your comparison find that this sectional drawing was substantially correct as showing the structure as it now exists?

A. As far as the structure itself is concerned, yes, but in certain details of intake and discharge of the conduits it is not.

Q. As to the structure itself, however, it is substantially [994] correct?

A. That's right, in dimensions, thicknesses, heights, and so on.

Mr. Ramsey: We offer plaintiff's identification "N" in evidence.

The Court: Any objection?

Mr. Cheadle: No objection.

The Court: Admitted:

(Whereupon, Plaintiff's Exhibit "N" for identification was admitted in evidence.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued)

Q. Did you also have available for your use a motor floor plan and transformer floor plan of the pump structure?

A. At least one, and possibly more.

(Whereupon, drawing of floor plan of pumping station was marked Plaintiff's Exhibit "O" for identification.)

Q. I hand you plaintiff's identification "O" and ask you if that is one of the floor plans that was available to you? A. It is.

Q. And that is from the same source as the other plans and drawings? A. It is.

Mr. Ramsey: We offer it in evidence.

Mr. Powell: No objection [995]

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "O" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. I hand you, Mr. Kurtichanof, four other plans or drawings and ask you to inspect them and state whether or not any of these were used by you for checking purposes, and the source of the same.

Mr. Powell: May I ask if counsel is going to have the witness explain all these drawings to the jury?

(Testimony of L. E. Kurtichanof.)

The Court: Well, I think he should look at them first and pick out which one you wanted marked.

A. This first drawing I am looking at is number 15997. It is the manufacturer's drawing of the number 3 pump. It is designated as a 36 inch centrifugal pump. It is only of interest in showing the detail of construction of the mechanical portions of the pump. Also the one you have in your hand there is also for the same reason. It is only for technical information, and not for particular use for anything else. This is a simple drawing of a section of one of the discharge pipes, leading from the pumping plant to the canal at the top of the hill. This is the 66 inch wood stave pipe.

Q. Now, what is this appearing in the lower left hand portion of the drawing? [996]

A. That is a profile of the ground between the pumping station and the canal, merely to illustrate the difference of elevation between the water surface in the river and the point of discharge of the pipe lines into the canal, to show the difference in the elevation.

Q. Do you know whether the elevation of the water surface as shown is the mean level, or what it might be?

A. No, I don't. It might be an arbitrary level assumed by the designer, but it shows the relative elevations between the two, the point of intake and the point of discharge. That will vary from year to year and from month to month, and I think it has

(Testimony of L. E. Kurtichanof.)

been testified before it varied within the limits of 40 to 65 feet, something of that nature.

Mr. Cheadle: Did the witness identify that one drawing as the one in accordance with which the wood stave pipe was built?

A. Well, I know that it is a wood stave pipe of that diameter.

The Court: Are either of you going to use any of these drawings, then?

Mr. Powell: They were identified.

The Court: They weren't identified, they were discussed here.

Mr. Ramsey: I don't believe any of them would be [997] of particular value except the one shown, and the witness was unable to state whether it was the mean level or not, and I considered it wasn't admissible.

The Court: It is also a different size. At any rate, if they're not going to be used, the jury will simply disregard this testimony. They were simply looking over the maps to see if they were going to use them. We'll adjourn until 10 o'clock tomorrow morning.

(Whereupon, the Court took a recess in this cause until Wednesday, February 19, 1947, at 10 o'clock a.m.) [998]

Yakima, Washington, February 19, 1947

10 o'Clock A. M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I notice in the instructions requested by the defendant the court is requested to instruct the jury that one of the elements of value in a case of this character, along with reproduction cost new, reproduction cost new less depreciation, and so on, is the capitalized value of earnings, or capitalized earnings. I have taken the view in former cases of this kind that while earnings may be shown as having a bearing on market value, that capitalized earnings should not be permitted to be shown, directly, at any rate, and that they are not an element of value. The only authority I have been able to find on that is Orgel on Value in condemnation proceedings. Orgel takes the view that capitalized earnings—that the jury should not be instructed that they are an element of value. If counsel can show me any authority to the contrary, I will of course consider it, otherwise I will be inclined to instruct that only the earnings and [1001] income of property may be considered. One thing I thought I should mention now so that I shouldn't overlook it, I had in mind submitting to the jury the amended petition, which contains a description of the properties involved, but the clerk called my attention to

the fact that one sheet of the amended petition sets forth the amount of the government's deposit or estimated award of, what is it, \$170,000.00. I wonder if counsel will stipulate that that particular page may be removed from the amended petition when it is submitted to the jury? I think if you'll look at it you will see that it leaves the balance of it complete.

Mr. Cheadle: As I recall, that is paragraph 6, and it also sets forth the government's legal contention, I believe. We will so stipulate.

Mr. Ramsey: The government will so stipulate.

The Court: Let's have it definite which page I am referring to, so that the record may show it. That is page 9, paragraph 6, and it is just preceding the prayer, so that the amended petition is complete without it. It sets forth the allegation that the real and property interests set forth in paragraph 4 constituted all the operating properties and facilities of the Priest Rapids Irrigation District, and then recites that the government has acquired all of the beneficial ownership and interest [1002] in the property, and that the District now holds the legal title in trust for the use and benefit of the United States, that the sum of \$170,500.00 deposited in the registry of the Court represents to sum which, together with the bond redemption fund, is sufficient to discharge all indebtedness, and so forth. I think that page should be removed.

Mr. Cheadle: Is the Court agreeable to hearing defendant briefly on the first matter your Honor mentioned?

The Court: Yes.

Mr. Cheadle: In the *United States vs. Waterhouse*, 132 F. 2d, 699, Circuit Court of Appeals, Ninth Circuit, decided in 1943, involving a number of questions, one of them was the question of capitalization of earnings. I am reading a quotation now from page 703. The court ruled that:

“Capitalization of rental value is evidence of market value of the land.”

And the Court there quoted and relied on the Olson case. That Waterhouse case, your Honor, was affirmed by the Supreme Court by an equally divided court in a concurring opinion which merely announced the decision. I do not know whether this question, or other questions, or this and other questions, were presented in the Supreme Court. [1003]

The Court: What was the result in the Supreme Court?

Mr. Cheadle: The Ninth Circuit was affirmed by an equally divided Supreme Court, 4 to 4. Also another Ninth Circuit case, *Puget Sound Power and Light Company vs. Public Utility District Number 1*, 123 F. 2d 286, decided in 1941. Certiorari was denied in that case, 315 U. S. 814. I have this quotation from that case, which I think implies clearly that capitalization of earnings was a matter to be taken up by the jury. The issue on this point was whether various rates for capitalization to which there had been testimony by witnesses could be assumed by the jury, and at page 293 the Court said:

“The jury should not be permitted to assume an interest rate, but should determine a proper one under the evidence.”

It was on the basis of that case, your Honor, that in the same instruction I believe we included a proposed instruction that the jury itself should determine the rate of capitalization. I believe you Honor will find Puget Sound Power and Light vs. Puyallup, 51 F. 2d, 688, another Ninth Circuit case decided in 1931, to the same general effect.

Mr. Ramsey: May I point out to the Court that there is a very wide distinction between a case involving rentals and a case involving capitalized estimated net earnings. In the one case you have a fixed and certain return on the rental, from which may be deducted a fixed and certain tax rate, leaving the only item in suspension the maintenance of the rental property. The operation costs of the rental property are fixed and certain. In the instant case the net earnings is a matter that is very much a matter of opinion, and varies very, very widely, so your first calling on your jury to fix and determine what the net earnings of the property is, then the rate of capitalization of course is a matter to be determined by the jury, so you're asking the jury to go out first and from a maze of evidence varying very, very widely, to determine the net possible earnings under certain circumstances of the property, from which must be deducted certain other items which must then be fixed by the jury, and then capitalize on a rate to be determined by the jury, and I submit that we're out in the realm of speculation on every single item involved in a capitalization of net earnings. The jury must speculate on every single thing that is taken into considera-

tion in computing the value predicated upon the assumed net earnings of the property.

Mr. Cheadle: In brief reply, your Honor, I wish to point out that in the Waterhouse case, this recent Ninth Circuit case, the rental values which were being testified to by the experts on the side of the land owner, they were testifying to rental values of sugar caneland if it were subdivided. There was a substantial possibility that in the reasonably near future the sugar cane lands on the outskirts of Pearl Harbor could be subdivided and handled as residential property, consequently the situation was quite analogous to the case here, and quite the opposite from what counsel points out.

The Court: I will look at those cases. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

L. E. KURTICHANOF

a witness called on behalf of the Petitioner resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Mr. Kurtichanof, I think when we adjourned yesterday evening we had just gotten down to the pumping plant, and were about to take up the matter of the pumping plant itself. Are you in agreement with the other witnesses who have testified

(Testimony of L. E. Kurtichanof.)

here that the line running down from Coyote Junction to the pumping plant consisted [1006] of about 1.6 miles of line?

A. Yes, that is substantially correct.

Q. And that that 1.6 miles of line was in no important respect different from the balance of the 14.4 miles of transmission line?

A. It differed only in the small detail of construction of the pole top assembly. In other words, in this section of line from Coyote Junction to the pumping plant, use was made of single cross arms, and all of the high voltage conductors were mounted on one cross arm. Sometimes there were assemblies of two cross arms on account of railroad crossings.

Q. Are you in agreement with the other witnesses that in determining the value of this particular 1.6 miles of transmission line, that it would be fair to just simply take the percentage of the total value placed on the transmission line represented by the 1.6 miles as compared to the total of 16 miles of transmission line?

A. I think that would be eminently fair.

Q. Now, with reference to the plant itself, what total yardage of excavation was necessary for the construction of that plant, and what character of excavation?

A. I had several classifications of excavation, part of it in the pump house building, part in the intake tunnel, built in the river bed. In the pump plant building proper [1007] I had 1540 yards at 60 cents.

(Testimony of L. E. Kurtichanof.)

Q. At what?

A. 60 cents. It was all in gravel.

Q. Yes.

A. In the intake tunnel, which is a separate structure, of course, the excavation was also gravel, which I estimated at \$1.00 because of the need for underwatering.

Q. How many yards did you say you found, or did you say, of this excavation?

A. The intake tunnel, my estimate was 625 yards of excavation, 1174 yards of back fill on top of the timber tunnel. The excavation was priced at \$1.00 a yard, the back fill at 50 cents.

Q. Now, what was your total yardage, again, of the back fill? A. 1174.

Q. Giving a total of—what's the total? Did you total the total number of yards involved there?

A. No, I didn't, because I did not use it in that way. I did not require those prices in that way. I priced the main features of the project independently of each other. In other words, I had a total price for the pump intake tunnel and a total price for the pump building and the transformer house. The different elements in the pumping plant of pumps, piping, separate items, switch board, separate item, and transformers and so on, domestic water [1008] supply, separate item, waterways and conduits, in which I included the intake tunnel and the pump discharge lines.

Q. Now, did you find that any excavation had been necessary in the pump discharge lines?

A. Yes.

(Testimony of L. E. Kurtichanof.)

Q. Did you make that a separate item, or run it through with the——

A. Separate item.

Q. And how many yards of excavation did you find was involved in that?

A. For the 66 inch pipe line, I estimated the excavation in the amount of 2114 yards. For the 72 inch wood stave pipe line, I estimated excavation of the same.

Q. The two items were 2114 yards each?

A. Yes.

Q. And what did you estimate was the cost of that excavation?

A. The excavation was priced at 60 cents, and I had something for back fill too. I have the relative costs in this ratio; excavation, \$1268.00, and the back fill, \$258.00, for each of the pipe lines.

Q. Did you make an examination of those discharge pipes as to condition?

A. On the surface, yes, and where it was feasible, at the point of discharge into the canal. [1009]

Q. What did you find the condition of those pipes to be?

A. At the time of my examination there was evidence of very heavy leakage. Water was spouting from numerous holes to considerable height, and a great many leaks were observed the full length of the line.

(Whereupon, photo of part of pipe line at pumping station was marked Plaintiff's Exhibit "P" for identification.)

(Testimony of L. E. Kurtichanof.)

(Whereupon, photo of part of pipe line at pumping station was marked Plaintiff's Exhibit "Q" for identification.)

Mr. Powell: Your Honor please, I don't believe we should be charged with the condition of the system after Mr. Ramsey's client had been operating it for a full irrigation season. This was in October or September he saw it. They took it over in April.

Q. When did you see that, Mr. Kurtichanof?

A. The pumping plant was in operation at the time I viewed it; these pipe lines were in service at the time I viewed it.

The Court: What date was that?

A. August 30 is the date the official photographer for the Seattle District Office of the United States Engineer Corps took these photographs under my direction.

Mr. Ramsey: If counsel is correct that the government took over the operation of the plant on the 1st of [1010] April, then it actually had been operated by the government about four months, and I submit to the court——

The Court: Well, I think it is near enough so that it has some probative value. The time would be an element to be considered by the jury.

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, at the time that you made your inspection of these properties, did you

(Testimony of L. E. Kurtichanof.)

take, or did you have taken under your direction, any photographs of structures and installations?

A. I did.

Q. I hand you plaintiff's Exhibits A, P and Q, and ask you to examine them and tell us what those are, if you know.

A. Exhibit A, is that the one?

Q. Yes.

A. That is the pump plant 72 inch wood stave pipe line.

Q. In place?

A. In place as on the date the photograph was taken, August 30. I have to refer to my identification sheets furnished me by the official photographer. It is a view, however, of the pump plant and an approach drive to the pump plant, to replace a fill which formerly exisited at that point.

Q. Is that identification P? A. Yes.

Q. And as a part of that photograph is any portion of the [1011] pipe line shown?

A. Just slightly, in the foreground, just ahead of the platform. Exhibit Q is another view of the pipe line, showing the extent of leakage at one particular point in the westerly pipe line.

Mr. Ramsey: We offer plaintiff's identifications A, P and Q in evidence.

Mr. Powell: Subject to the objection we made as to the nature of this whole testimony, we have no objections to the photographs.

The Court: All right, they will be admitted.

(Whereupon, Plaintiff's Exhibit "A" for identification was admitted in evidence.)

(Testimony of L. E. Kurtichanof.)

(Whereupon, Plaintiff's Exhibit "P" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "Q" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. You state, Mr. Kurtichanof, that you found these pipe lines leaking badly?

A. Yes, sir.

Q. And what condition of depreciation did you determine there had been upon these pipe lines?

A. After taking into consideration the salvage value of the bands and shoes, which might be used in replacement, I [1012] arrived at a percentage condition of 5 per cent.

Q. And what replacement cost did you place on the two pipe lines, the 66 and 72?

A. Estimated cost of reproduction as of September 30 was \$16,189.00.

Q. That is on the two pipe lines?

A. Both pipe lines, yes.

Q. And you gave them a depreciation of how much?

A. The per cent condition at 5 per cent, the depreciated value \$809.00.

Q. From your observation of the pipes and their condition in use there, Mr. Kurtichanof, how much longer would you have estimated, or did you estimate, those pipes could be used for the purpose they were being used for?

(Testimony of L. E. Kurtichanof.)

A. I figured they would not be of any service in the next irrigation season, possibly would not last during the remainder of the year had there been irrigation.

Q. Now, going on to the structure, then, from your inspection, observation and measurements of the plant there, what did you determine to be the yardage of concrete required to build the plant?

A. 900 cubic yards.

Q. And what was the nature of that concrete used there? Was it re-enforced, steel re-enforced, or otherwise?

A. I could not find evidence of re-enforcing except in [1013] structural shapes, under the floor supporting the motor and pump load. I assumed from the nature of the construction that there would be a wire mesh in the floor system. I searched for evidence of re-enforcing in the walls, but the walls were of very massive construction. On the occasion of one of my visits a crew of workmen were breaking a large hole out in the downstream wall of the pump house on the pump floor level. I took careful note of that concrete at that time, and it appeared to me that it was made of bank run aggregates; in other words, the sand and gravel were used as excavated out of the banks immediately adjacent to the plant. I saw presence of boulders in this wall. I measured one that was in excess of twelve inches in dimension. The wall at this elevation was about 28 inches in thickness. My conclusion was that it was rather doubtful that

(Testimony of L. E. Kurtichanof.)

there was any re-enforcing used in the walls. I allowed, however, for adequate re-enforcing in the roof slab and in the floor slabs, because it is my judgment that it should be there.

Q. And did you assume that it actually was there?

A. I did assume it, and I allowed quantities of re-enforcing steel and measured the structural steel which was in evidence.

Q. By structural steel do you mean such things as I-beams?

A. I-beams, and channels, and angles, which are used in the [1014] frame and for the floor.

Q. Now, Mr. Kurtichanof, what price did you fix per cubic yard on this concrete used in the construction of the building? A. \$16.30.

Q. What basis did you use in determining the per yard cost to be ascribed to the concrete used in the construction of the power house building and of the pumping plant building?

A. I don't get your question clearly, Mr. Ramsey.

Q. What was the basis upon which you determined the cost per yard of this concrete used in this building and in the power house building?

A. I obtained the market prices of cement delivered on the job, at the nearest railroad siding, estimated the cost of hauling, the cost of mixing, the cost of forms, and arrived at this figure.

Q. Now, did you have available any specific bid prices or actual cost prices on this sort of work?

(Testimony of L. E. Kurtichanof.)

A. Oh, yes. I had many of them. As a matter of fact, just about concurrently with this work, I had another hydro-electric project under construction on the Rogue River, approximately the same size and in many elements, very, very comparable.

Q. You had available the actual cost price of concrete of [1015] this character in the construction of this building? A. Yes, I had.

Q. Together with re-enforcing steels and the other elements that you have mentioned that would go into the construction of this building?

A. Yes.

Q. Now, in fixing your cost of excavation in this building and in the canal, power canal, and in the power house and the various other things that you've testified to, how did you arrive at the cost price per yard that you placed on the various material?

A. From my knowledge of similar work performed elsewhere.

Q. And how was that knowledge gained, Mr. Kurtichanof?

A. Well, partly from first-hand experience, partly from data that I have available in my office of unit prices bid on various types of construction jobs, and by comparing them with other jobs of comparable size and nature I can estimate fair prices for the particular job under consideration.

Q. Now, does the cost of excavation vary with the various materials which may be encountered?

(Testimony of L. E. Kurtichanof.)

A. Yes, with various materials, with various conditions affecting it, with the quantities involved, and other similar elements.

Q. You would expect a wide range of variation in the cost [1016] price of excavation between rock and dirt, or small gravel?

A. Ordinarily, yes, but I have seen many bids in which unit prices of rock and gravel or ordinary excavation, so termed, were bid in at the same price per unit.

Q. Well, the actual cost of that excavation would be a great deal different, wouldn't it, between rock and gravel or dirt?

A. Well, the bidders don't often go into very much detail when making their estimates. They base their judgment more on experience and an average cost over the job, rather than specific fine divisions between the various classifications.

Q. The point I'm making is this, Mr. Kurtichanof. Wouldn't the bidder, however, in making his bid per yard on a general average, take into consideration how much of it was rock and how much of it was other materials?

A. He should, yes. The practical man would.

Q. The actual cost of excavation does vary widely, does it not? A. Yes, it does.

Q. What condition generally did you find the pumping plant structure in?

A. I think fair, for its service to which it had been subjected; the normal wear and tear that might be expected [1017] of it. There had been

(Testimony of L. E. Kurtichanof.)

several breaks through the walls that were not originally designed there.

Q. You would say that it was in as good condition as might have been anticipated in view of the period of use to which it had been subjected, and the character of the use? A. Yes.

Q. Did you observe any structural weaknesses?

A. Not of serious consequence.

Q. Now, at the time that the jury was viewing these properties, Mr. Kurtichanof, they found, I believe, a fill in the front of this pump structure, nearly to the level of the entrance doors. Did that condition exist on September 1 of 1943?

A. There was no fill there. There was a temporary timber structure with a timber deck to give access to the pump plant at the front door level. This structure varied from about 4 to I would estimate 8 or 10 feet in height.

(Whereupon photo of rear of pump station was marked Plaintiff's Exhibit "R" for identification.)

(Whereupon, photo of front of pump station was marked Plaintiff's Exhibit "S" for identification.)

Mr. Ramsey: Never mind, Mr. Kurtichanof, we're not going to run back on the exact date these were taken. [1018] Counsel has indicated that they will not make any objection on that basis.

Mr. Powell: We won't object to the admission, your Honor. They can be marked admitted.

The Court: All right.

(Testimony of L. E. Kurtichanof.)

Direct Examination
(Continued)

Q. Handing you plaintiff's identifications "R" and "S", I'll ask you if those two photographs represent the condition that existed out there in August and September, 1943, as to fill or lack of fills in the immediate vicinity of the pumping plant?

A. This is exactly correct as I viewed it.

Mr. Ramsey: We offer identifications "R" and "S" in evidence.

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "R" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "S" for identification was admitted in evidence.)

Direct Examination
(Continued)

Q. Now, it has also been indicated, Mr. Kurtichanof, that certain changes have been made out there in the point at which the discharge pipe enters the canal between September 1, 1943, and the time it was viewed by the [1019] jury. I ask that this be marked as plaintiff's identification "T".

(Whereupon, photo of end of one discharge pipe was marked Plaintiff's Exhibit "T" for identification.)

(Testimony of L. E. Kurtichanof.)

Q. I hand you, Mr. Kurtichanof, Plaintiff's Exhibit "T", and ask you if that photograph is a fair representation of the condition that existed at the point of junction of the pipe lines with the canal on September 1, 1943?

A. Yes, this shows an elevated water tank over the point of the canal where one of the pipe lines discharges into the canal.

Mr. Ramsey: We ask that plaintiff's identification "T" be admitted in evidence. We offer it in evidence.

Mr. Powell: I would prefer that they be offered together, if your Honor please. Identification "T" does not show the same condition that was seen by the jury, and I think if there is a photograph that shows a relatively same condition as they viewed it, they should see that too.

A. Well, they couldn't help but see that.

Mr. Powell: Yes, they saw that.

Mr. Ramsey: There apparently is no additional copy of that photograph.

Witness: Take it out of your copy of the report, [1020] page 46.

Mr. Ramsey: I ask that this be marked as plaintiff's identification "U".

(Whereupon, photo showing end of discharge pipes was marked Plaintiff's Exhibit "U" for identification.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued)

Q. I hand you plaintiff's identification "U", Mr. Kurtichanof, and ask you what that is, first.

A. This is a photograph or a view looking towards the discharge end of the pipe line serving this canal. It is to be noted that the pipe lines come by separate routes, about 30 feet apart, and they discharge into this transition portion of the canal and ultimately it is made one channel.

Mr. Ramsey: I offer plaintiff's identifications "T" and "U" in evidence.

Mr. Powell: No objection.

The Court: Admitted:

(Whereupon Plaintiff's Exhibit "T" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "U" for identification was admitted in evidence.)

Mr. Ramsey: I ask that this be marked as plaintiff's identification "V". [1021]

(Whereupon, photo of intake pipes at pump station was marked Plaintiff's Exhibit "V" for identification.)

Direct Examination

(Continued)

Q. Mr. Kurtichanof, in your examination of the pumping plant did you also make an inspection of the intake pipes?

A. Yes, insofar as they were feasible.

(Testimony of L. E. Kurtichanof.)

Q. Was there a photograph taken of those at the time of your inspection?

A. At one period of my inspection, yes, when the river level had fallen to a point where these pipes were capable of being photographed.

Q. I hand you plaintiff's Exhibit "V" and ask you to identify that.

A. This is a photograph of the two 42 inch suction lines from the pumps to the intake tunnel. The view is taken looking straight down from a window at the level of the operating floor.

Mr. Powell: May I inquire just a moment? The dark place in the picture is the shadow of the building?

A. Shadow of the building, yes.

Mr. Powell: What is the instrument or thing at the right?

A. This is a small pipe, about 2 inches in diameter, used for pump suction of the small pump supplying domestic [1022] water.

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "V" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, did you inspect the installation of the machinery in the pumping plant?

A. Yes, I did.

(Testimony of L. E. Kurtichanof.)

Q. You have heard the testimony of the District's witnesses as to the items of installation and equipment to be found that was present in the pumping plant at the time it was taken over by the government, I think on April 1, 1943?

A. I heard the testimony.

Q. Did your inspection of the installations and equipment, machinery, in the plant differ materially from the tabulation that was made by the witnesses for the District?

A. Not as I recall the testimony.

Q. How many pumps did you find in the pumping plant utilized for pumping water to the irrigation district from the pumping plant, or to the irrigation canal?

A. Really, four. Two with a rating of 28,800 gallons per minute each, against 35 foot head; one rated 31,500 [1023] gallons per minute at 60 foot head, and one rated 3000 gallons per minute at 60 foot head.

Q. That pump rated 3000 gallons per minute at a 60 foot head, was that connected up with the pipe lines leading to the canal, or was it used for another purpose?

A. It was a very peculiar connection. The two large pumps rated at 28,000 gallons each were connected in series, and this 3000 gallon pump was tapped off of that series between the two main pumps.

Q. I'm not sure that I got that.

A. If you can visualize the two large pumps

(Testimony of L. E. Kurtichanof.)

connected in series through, we'll say, approximately 30 foot length of 30 inch pipe, and somewhere in that 30 inch pipe you take a tap off to serve as a suction for the 3000 gallon pump, and it in turn then discharges into the same 66 inch wood stave line as the two main pumps connected in series.

Q. It was actually connected with the two pumps in series?

A. Well, now, the water pumped by this small pump discharged into the wood stave pipe directly?

A. Yes, but the suction of this pump would be drawn through the impeller of one of the big pumps, which was between it and the suction well. [1024]

Q. Now, it was connected between the two big pumps connected in series? A. Yes, sir.

Q. So any water which it would have pumped would have been a part of the water which was being sucked up by the first big pump?

A. Well, if the two big pumps were running. I believe the purpose was to be able to supply small quantities of water when it was not required to run the big pumps. That way it would have to suck through one of the large pumps, which would have to be tied in place to keep it from rotating, and then discharged through a by-pass around the second of the two large pumps directly into the 66 inch line.

Q. Well, was that an efficient connection?

A. No, I think it was a very poor connection from an engineering standpoint.

(Testimony of L. E. Kurtichanof.)

Q. Now, as to the two big pumps connected in series, I believe you said those two pumps were rated on a 36 foot head, is that correct?

A. I have it 35.

Q. 35 foot head; was the utilization of those two pumps in series efficient?

A. It is not.

Q. And why not? [1025]

A. Because of the very reduced efficiency, and primarily extravagance in original cost.

Q. What about cost of operation?

A. Cost of operation would be very materially increased over that of a unit which was especially adapted for the head involved.

Q. What size motors were utilized to run each of these two pumps connected in series?

A. The two pumps rated at 28,000 gallons each were driven by motors of rating of 450 horsepower.

Q. What sized motor would be required to operate a pump rated at 28,000 gallons on a 65 or 66 foot head?

A. Well, a direct comparison might be found in this particular plant. The other pump, large pump, rated at 31,000 gallons at 60 foot head, is driven by a motor of 675 horsepower rating, and I have a quotation from the manufacturer of the original pumps to deliver the same quantity of water as their rating to a 60 foot head with a 600 horsepower motor.

Q. So that actually in the operation of the two pumps connected in series you were utilizing 900 horsepower in the motors to deliver the same water

(Testimony of L. E. Kurtichanof.)

that could have been delivered with a 600 horsepower motor on a single pump designed for a 60 foot lift? A. That's right. [1026]

Q. The cost of operation of the two 450 horsepower motors would be—would it be any greater, or materially greater, than the cost of operation of a single 600 horsepower motor?

A. It would be 50 per cent greater.

Q. Is the cost price of the two pumps connected there in series greater than the cost price of a single pump with a 28,000 gallon rating, at 65 feet head?

A. The combined cost of the two pumps is nearly double that of the cost of a modern pump, or it is nearly double that of the cost of the number 3 pump, which is designed for 60 foot head and a slightly greater delivery.

Q. Does that condition represent any degree of obsolescence in equipment or utilization of equipment? A. In my estimation it does.

Q. Now, with reference to depreciation, did you make any determination of how long these various pumps had been in service, and motors?

A. Yes, I have.

Q. And in the main, how long had most of those things been in service there in the pump house?

A. Well, the two which are connected in series have been in since about 1907. The number 3 pump, the 36 inch I. P. Morris pump, was installed in 1912.

Q. Did you observe any other installations there that were [1027] obsolete for any reason?

(Testimony of L. E. Kurtichanof.)

A. In the matter of equipment, practically every other auxiliary piece of apparatus associated with the main equipment would be in the same classification as the main part of the equipment.

Q. And what degree of depreciation and obsolescence did you determine existed with reference to the equipment and installations in the pump house there?

A. Well, obsolescence in my conception is a part of depreciation. It is one element of depreciation. Taking into consideration all elements of depreciation, I have found a per cent condition for the two old pumps to be 20 per cent; for the 36 inch pump, 51 per cent; for the 3000 gallon pump, 51 per cent, and for miscellaneous small pumps, such as the vacuum pump, lubricating pump, sump pumps, and so on, 51 per cent; the piping, 69 per cent. The piping includes all of the piping and valves; there's some very expensive valves in there, 30 and 36 inch in size. The switch board was in 51 per cent condition, transformer 51 per cent; spare set of windings for the transformer, 100 per cent condition; domestic water supply system, 36 per cent conditions; water-ways and conduits 69 per cent; pump discharge lines, 5 per cent; yard lighting is 47 per cent; shop equipment and tools, 40 per cent; total pumping plant, the composite of all these, is 42 per [1028] cent condition.

Q. And what depreciation did you determine there was upon the structures?

(Testimony of L. E. Kurtichanof.)

A. In my account structures, I have included pump house, operator's cottage, bunk house, blacksmith shop, and transformer house. For the pump house I have assigned a per cent condition of 83. The operator's cottage, 25; bunkhouse, 22; blacksmith shop, 22; transformer house, 39; and composite of all structures, 73.

The Court: We'll take a ten minute recess now.

(Short Recess)

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued.)

By Mr. Ramsey:

Q. Mr. Kurtichanof, what figure did you arrive at as the replacement cost of the pumping plant?

A. \$146,622.00.

Q. Now, that includes the pumping plant structure? A. Yes.

Q. The installations?

A. Total pumping plant. It includes structures, and the equipment, water-ways, discharge lines, and all auxiliary equipment.

Q. And what did you determine to be the depreciated value of [1029] that plant?

A. The per cent condition was 42; the depreciated value was \$62,788.00.

Q. Now, going back for a moment to the transmission line, how much of an inspection did you make of that transmission line?

(Testimony of L. E. Kurtichanof.)

A. I inspected every pole, with the exception of perhaps three or four structures which are located high up on a rocky bluff between Midway and Priest Rapids. There might have been only two. I missed two H-frame structures that I did not climb up to the structure.

Q. You made a pole-by-pole inspection?

A. Pole-by-pole inspection, and looked at each number appearing on the pole, together with all appurtenances on the pole.

Q. Did you take any photographs during that inspection of unusual or typical pole structures or stretches of the line?

A. I had several photographs taken, some of typical construction such as represented in the one and a half mile section between Coyote Junction and the pumping plant, which I had referred to before as representing a flat configuration of the construction, also of the remaining fourteen and a half mile construction at Coyote Junction, representing the triangular type of construction, [1030] also of a number of difficult structures located in difficult locations, as well as terminal structures at both ends of the line.

Mr. Ramsey: I ask that these be marked as plaintiff's exhibits "W" and "X" for identification.

(Whereupon, photo of one pole on power line was marked Plaintiff's Exhibit "W" for identification.)

(Testimony of L. E. Kurtichanof.)

(Whereupon, photo of one pole on power line was marked Plaintiff's Exhibit "X" for identification.)

Direct Examination

(Continued.)

Q. I hand you, Mr. Kurtichanof, plaintiff's identification "W", and ask you what that is?

A. That represents a structure, I believe about the first one leaving the tangent line going north, or in a northerly direction, some point north of Midway Station, where it began entering the difficult type of construction. In the background is seen an H-frame type of construction, high up on the rocky bluff.

Q. Is that H-frame type of construction part of this line? A. It is.

Q. And what is shown otherwise by the photograph?

A. Well, it shows an angle in alignment of the line, and a type of bracing to support a pole. In this particular case, instead of using a guy [1031] on the opposite side of the strain, a push brace, consisting of a pole, is used.

Q. I hand you plaintiff's identification "X", and ask you what that is?

A. This shows an individual pole located high up on an almost perpendicular bluff, very difficult of access. The figure in the foreground is myself, and by looking closely to my right you can see a

(Testimony of L. E. Kurtichanof.)

wire rope ladder which is anchored in the rock to give access to the base of this pole.

Q. Does that represent a section of the more or most difficult construction that there is on the line? A. The most difficult.

Mr. Ramsey: We offer plaintiff's Exhibits "W" and "X".

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "W" for identification was admitted as evidence.)

(Whereupon, Plaintiff's Exhibit "X" for identification was admitted as evidence.)

Direct Examination

(Continued.)

Q. Now, Mr. Kurtichanof, as a part of your examination and inspection of the power plant itself, were any photographs taken? A. Yes.

Mr. Ramsey: I ask [1032] that these be marked as plaintiff's "Y" and "Z" for identification.

(Whereupon, photo of upstream side of power plant was marked Plaintiff's Exhibit "Y" for identification.)

(Whereupon, photo of downstream side of power plant was marked Plaintiff's Exhibit "Z" for identification.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued.)

Q. I hand you plaintiff's identifications "Y" and "Z", and ask you what they are?

A. Exhibit "Y" is one view of the front of the power plant, and on the upstream side. Exhibit "Z" shows a view of the downstream side of the power house, the tail race structure, and piers.

Mr. Ramsey: We offer plaintiff's Exhibits "Y" and "Z" in evidence.

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "Y" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "Z" for identification was admitted in evidence.)

Direct Examination

(Continued.)

Q. Now, Mr. Kurtichanof, what was the total depreciated value, or rather, what was the replacement cost less [1033] depreciation value fixed by you upon the power canal, the power plant, and the transmission line to Coyote Junction, that would be the first 14.4 miles of the line?

A. I did not price the division of the transmission line as you have indicated. I priced the entire line, but in my previous testimony I had made the statement that it was a fair assumption

(Testimony of L. E. Kurtichanof.)

that that portion of the line running from Coyote Junction to the pumping plant, comprising about 1.6 miles, the value of that section would be about 10 per cent of the total value of the transmission line.

Q. Are you able to give us the combined figures, then, of the items I have mentioned, as to reproduction cost less depreciation.

A. Yes. Reproduction cost new—I will first give you the summary of the principal items. Intangible plant, \$53,700.00; hydro-electric power plant, \$407,031.00; transmission plant, \$52,775.00; pumping plant, \$146,622.00.

The Court: Was the pumping plant included in your question, Mr. Ramsey?

Q. No, it wasn't. I'm only concerned now in the values as to the power canal, the power plant, and the first 14.4 miles of the transmission line.

A. I will have to make that quick computation here, Mr. Ramsey, to get that.

Q. Yes. [1034]

A. Estimated reproduction cost new of the hydro-electric power plant and of 14.5 miles of the transmission line allocated on the basis which was just mentioned, is \$454,528.00.

The Court: I assume that does not include the power canal. A. It does.

The Court: It does include it? A. Yes, sir.

Q. 454—what was the balance of that?

A. \$454,528.00.

(Testimony of L. E. Kurtichanof.)

Q. Now, that is your replacement cost new of the power canal, the power plant, and the first 14.4 miles, or down to Coyote Junction, of the transmission line? A. That's right.

Q. Now, what is your depreciated value, or your replacement cost less depreciation value, on those same items?

A. In arriving at these totals I had to get the composite weighted average, so the per cent condition, the weighted average per cent condition, of the hydro-electric power plant, is 69.37, which would be applied to the figure of \$407,031.00, and for the transmission plant, the per cent condition is 22.59, applied to \$47,497.00.

Q. Now, let's get those per cents of depreciation totals again. [1035]

A. For the hydro-electric power plant, the per cent condition, 69.37.

Q. Yes.

A. The transmission plant, the per cent condition is 22.59.

Q. Well, now, can you give us the totals of those?

A. I did not have it prepared in that manner, Mr. Ramsey, so I would have to go through the computations to give you the figures.

Q. Well, will you make up that computation so we may have the figures?

A. O.K. For the power plant that would result in a depreciated value of \$282,357.00; for the trans-

(Testimony of L. E. Kurtichanof.)

mission plant, it would be \$10,730.00, making a total of \$293,087.00, if my computations have been correct.

Q. Now, as a part of your efforts to arrive at the fair value of this property did you take into consideration the past earning records and past production records of the property? A. I did.

Q. And for that purpose what records did you have access to?

A. I had records made accessible to me at the irrigation district's offices at the power plant, and at the pumping plant; also in consolidated form, which were more convenient for my use, I obtained them from the Pacific Power and Light Company.

Q. Those were [1036] the records of the actual power generated at the plant?

A. The operations of the plant for the years 1932 to 1942 inclusive, and the first 10 months of 1943. However, in my computations I did not use the figures for 1943; I used just eleven full years of operation.

Q. Did you also have available to you the records of the earnings or the sales of power during that period of time by the District?

A. I had a record of billings for energy sold to the Pacific Power and Light Company.

Q. Now, Mr. Kurtichanof, state whether under your direction there was a tabulation of output of power from the plant for those years, by years, total amount of power sold to the Pacific Power and Light Company, by years, for the years indi-

(Testimony of L. E. Kurtichanof.)

ated, that is, '32 to '42 inclusive, the amount of power used by the District, together with allowance made for line loss, and the net of the self-consumed power used, and the revenues from the sales of power, each of those items being by year for each year from 1932 to 1942 inclusive?

A. I had such information available by months, and from this data I had it compiled in the manner that you suggested, or that you just asked me about.

Mr. Ramsey: I ask that this be marked as Plaintiff's [1037] identification A-1.

(Whereupon, tabulation of power produced and disposition thereof from 1932 to 1942, inclusive, was marked Plaintiff's Exhibit A-1 for identification.)

Q. I hand you plaintiff's Exhibit A-1, Mr. Kurtichanof, and ask you if that is the compilation that you have just testified to?

A. Yes. This is a summary by years, taken from my original data obtained, which represented the performance by months for each of the years indicated.

Mr. Ramsey: We offer identification A-1 in evidence.

Mr. Powell: May we have just a moment?

The Court: Yes. Do you have a copy of it?

Mr. Powell: Yes.

Mr. Ramsey: We ask that a copy of the exhibit be handed to each of the jurors.

(Testimony of L. E. Kurtichanof.)

The Court: Yes, that may be done if it is admitted.

Mr. Powell: If your Honor please, we object to the admission of the identification for the reason that the computation shows the matters pertaining to the operation of the power plant prior to the time when the improvements were made and the condition was changed to the [1038] condition in which the government took the property in October, 1943, there being a new improvement in the canal and a new generator installed in 1941.

The Court: Overruled. It will be admitted.

(Whereupon, Plaintiff's Exhibit "A-1" for identification was admitted as evidence.)

(Whereupon, the clerk distributed copies of Plaintiff's Exhibit A-1 to the jury and one alternate juror.)

Direct Examination

(Continued.)

Q. Now, Mr. Kurtichanof, referring to Exhibit A-1, in the first column appears the numbers 1932, 1933, 1934, and so on, down to and inclusive of 1942. To what does that refer?

A. That represents a tabulation of the total production.

Q. No, I mean just this one column.

A. Oh, the successive years for which this data is shown.

(Testimony of L. E. Kurtichanof.)

Q. Now, in column 2, headed "Total output, KWH" appears certain figures opposite each of the numbers which you have testified is the year; now, what does that represent?

A. That represents the kilowatt hour production at the power plant for the year opposite which the figures stand.

Q. Now, in column 3, under the heading "Sold to P. P. & L. Company after losses" what does that column represent?

A. That represents the net kilowatt hours for which bills [1039] were rendered to the Pacific Power and Light Company after deducting 5 per cent for losses as provided in the contract.

Q. Then "Own use and losses" what does that column represent?

A. That represents the difference between the amount produced and the amount sold.

Q. And the next column "5 per cent allowance to P. P. & L. for loss"?

A. That is a computation of 5 per cent on the actual amount sold. In other words, the kilowatt hours sold in the second column must be divided by 105 in order to determine the kilowatt hours allocated to losses.

Q. Then the column next appearing is "Net Self Consumed". What does that column represent?

A. That represents the kilowatt hours generated, less kilowatt hours sold and less allowance for losses.

(Testimony of L. E. Kurtichanof.)

Q. And in the last column "Revenues from Sales to P. P. & L. Company"?

A. Those are the summary of all bills rendered in that year for power sold to the Pacific Power and Light Company.

Q. Now, in the 10 or 11 year period appearing in that tabulation, in what year was the greatest amount of revenue realized, and the greatest amount of power generated at the plant?

A. In the year 1942. [1040]

Q. And how many years was that plant under District operation?

A. I don't remember the exact date. I believe it was in '31 or '32 when the District started operating. However, this contract for the sale of power to the P. P. & L. was first made in 1932 for the period of ten years, and revised in 1940 for an additional twenty years.

Q. And was there any complete records available to you prior to the year 1932 as to the generation of power at the plant, or any of these other items?

A. I did not find any. There might have been some around, but the records of the District were more or less scattered. Some were maintained, as I said, at the pumping plant, some at the power house, and some at the office in White Bluffs, and it was quite a difficult job to assemble them all and study them all to get them into the shape that I have them here.

(Testimony of L. E. Kurtichanof.)

Q. Mr. Kurtichanof, does your tabulation include all of the years for which you were able to find complete records up to and including 1942?

A. My information was from the beginning of 1932 to and including October, 1943.

Q. You have not included in this tabulation, however——

A. I have not included anything for 1943, because the year was incomplete. [1041]

Q. Thank you. Now, you stated a moment ago, Mr. Kurtichanof, that you made a tabulation by month of all of the power generated by the power plant, at Priest Rapids Irrigation District Power Plant, from 1932 to and inclusive 1943?

A. That is right, including a portion of 1943.

Q. Oh, yes, to and including 1942.

Mr. Powell: Is that '32 through '43?

Q. '32 through '42. State whether or not a compilation and summary of the generation of power at the plant for the period indicated, that is, from the beginning of 1932 to and including 1942, by months, was made under your direction? A. Yes.

Mr. Ramsey: We ask that this be marked as plaintiff's Exhibit A-2.

(Whereupon, tabulation showing K.W.H. produced by months 1932 through October, 1943, was marked Plaintiff's Exhibit "A-2" for identification.)

Q. I hand you plaintiff's Exhibit A-2, and ask you if that is the compilation that you have just testified to? A. Yes, it is.

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: We offer Plaintiff's Exhibit A-2 in evidence.

Mr. Powell: May I examine the witness shortly, your Honor? [1042]

The Court: All right.

Voir Dire Examination

By Mr. Powell:

Q. Where did you get the figures to make the compilation, Mr. Kurtichanof?

A. From the Pacific Power and Light Company, the original figures together with the billings.

Q. In what office.

A. At the office of the general superintendent, Mr. H. H. Schoonfield.

Q. In Portland, Oregon?

A. In Portland, Oregon.

A. And did that appear to be original records, from which you took these records?

A. I did not take them; I asked them to prepare them for me.

Q. Then the Pacific Power and Light Company prepared these records for you?

A. Yes, basically.

Q. Have you checked them with the daily log sheets here in evidence?

A. I checked them to some extent, but as I said before the records of the District were rather difficult to obtain. They were widely scattered, some sheets missing, and so on, and I was further informed when making my inquiries, particularly at

(Testimony of L. E. Kurtichanof.)

the power plant, that all the pertinent data that they recorded was in turn transmitted [1043] to the load dispatcher of the Pacific Power and Light Company and recorded there as well, and it was suggested by Mr. Grell that their records would be more complete than those of the District itself.

Mr. Powell: Has this been offered?

Mr. Ramsey: Yes.

Mr. Powell: The same objection we made on the other exhibit, your Honor, that it shows the records of the plant that wasn't the same as the government took.

The Court: Overruled. It will be admitted.

(Whereupon, Plaintiff's Exhibit "A-2" for identification was admitted in evidence.)

Mr. Ramsey: I ask that copies of the exhibit be distributed to the jury.

The Court: All right, that may be done.

(Whereupon, the clerk distributed copies of Plaintiff's Exhibit "A-2" to the jury and one alternate juror.)

Direct Examination

(Continued.)

By Mr. Ramsey:

Q. Now, Mr. Kurtichanof, I note that in Exhibit A-2 appears the number "1932" and under that—that is at the extreme upper left hand corner of the page — under that, "January" "February" "March" "April" "May" and through December,

(Testimony of L. E. Kurtichanof.)

followed by certain figures, and then finally "Total" followed by a figure. Will you just explain what that [1044] represents?

A. It represents the kilowatt hours produced each month.

Q. During the year what?

A. During the year of '32, '33, and so on, as shown on this sheet, and at the bottom of that tabulation would be the total production for that year.

Q. For that total year? A. Yes.

Q. Now, I note that following January, under '32, appears the figure what?

A. Zero, indicating that the power plant was not operated, did not produce.

Q. There was no production of power for that month?

A. For January, February, November, and December of that year.

Q. Under 1933 there are two months, January and February? A. That is right.

Q. Followed by zeros, that indicates the same thing. In 1934 the zero follows only the month of March? A. That is right.

Q. In '35 only the month of December?

A. That is right.

Q. In '36 the months of January, February, March, November, and December are followed by zeros? A. Right. [1045]

Q. In '37 the months of January, February, and March are followed by zeros?

A. That is right.

(Testimony of L. E. Kurtichanof.)

Q. In '38 the months of January, February and March? A. Right.

Q. In '39 the months of January and February? A. Right.

Q. In '40 the month of February?

A. And December.

Q. And December. In '41, the months of January, February and March show as zero?

A. That's right.

Q. And in 1942 there are no months where there was no production of power?

A. That is right.

Q. Under the 1943 column appears figures for January, February, March, April, May, June, July, August, September, and October, but no figures for November or December, and no total for the year?

A. That is right.

Q. Why is that?

A. Why? Because the operation was then in the hands of the government.

Q. That is because of the fact that the government took over the operation of the plant on October 1, '42? A. On October 1. [1046]

Q. And for the same reason you did not total the output for the year?

A. Not only that, but the figures were not available at the time I prepared my record.

Q. Yes. Now, in determining the fair value of the properties which I have indicated, that is, the power plant, canal, and the portion of the trans-

(Testimony of L. E. Kurtichanof.)

mission line to Coyote Junction, did you have in mind the earning record and earning capacity of that plant?

A. The earning value is one measure that I used to determine the fair value of the property.

Q. Is reproduction cost less depreciation another approach? A. It is.

Q. And in fixing the fair value of that property, did you have in mind one or all of the elements which you have testified that you were able to find data on?

A. All of the elements to which I have previously testified.

Q. Now, Mr. Kurtichanof, don't answer this question until counsel has had an opportunity to object. In the light of your investigation along the various lines that you have testified to, and considering the fair value of the property as being the sum in cash that would probably be agreed upon between a willing seller, willing but not compelled to sell, and a willing buyer, willing but not [1047] compelled to buy, what, in your opinion, was the fair value of the power plant of the Priest Rapids Irrigation District, together with the power canal and the transmission line from the plant to Coyote Junction, on September 30, 1943, with the obligation and duty imposed upon the plant of supplying to the Priest Rapids Irrigation District power for the pumping of water for the irrigation of lands in the district, not only those lands under irrigation on that date, but those lands which in the contemplation of a

(Testimony of L. E. Kurtichanof.)

reasonable person might be expected to make demand for water for irrigation within the reasonably foreseeable future?

Mr. Powell: We object, your Honor please, as not being a proper measure of value. The petitioner here taking the property has the fee simple title, which is the interests of all kinds in the property subject to private ownership, and not subject to any encumbrance. The petition so alleges, and we understand that is what the government is doing. The question pre-supposes a burden on the property which your Honor has from a legal standpoint disposed of otherwise.

The Court: I will excuse the jury until 1:30.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.) [1048]

Mr. Ramsey: I submit to the Court that any sale of this property that can be in contemplation of this jury or of the Court is a sale as between private parties in the condition of the property as it was on the date of taking. On that date any person or any corporation or any firm desiring to purchase the power facilities, generating and transmission facilities, of the Priest Rapids Irrigation District necessarily would and could only have purchased subject to the burden imposed upon the power generation and transmission facilities to furnish water for irrigation, or furnish power for operation of pumps to supply water for irrigation to

(Testimony of L. E. Kurtichanof.)

the Distict. Now, that point has already been determined by other courts. It is *res adjudicata*. It is established firmly by the decision of the Supreme Court of this State, I believe, as well as the Circuit Court of Appeals for the Ninth Circuit, that that burden and that duty is imposed upon those facilities in perpetuity. Certainly any purchaser could only buy what the seller has to sell. In this instance it is the property, but it is the property with the burden and obligation imposed upon it that it has already been determined by the courts cannot be shaken off, and in prior suits that very issue was presented, as to whether it could be taken or sold free of the obligation [1049] and duty to the land. Now, I respectfully submit to this court that there can't be any other approach in this matter.

We might say, well, we can assume that a certain per cent of the generating and transmitting facilities of that plant will be required for the irrigation of the property, and we can then fix the value of the property freed of all obligation, and say, well, 30 per cent of that has been and will be required for irrigation, and therefore 70 per cent of the value of the property freed of all obligation is a fair measure. I submit to the Court you might just as well say that if you were selling an apartment house over here where there is a 99 year lease, paid up, on two-thirds of the building, that you could use the same approach, that is, that the buyer will say "Well, certainly I'm charged with the obligation and the duty of maintaining the property, of paying the taxes on the property, of supplying janitor

(Testimony of L. E. Kurtichanof.)

service, of supplying elevator service, and I can only get the rents from one-third of the property, and therefore we will determine what I shall pay on the basis of it is worth so much, I'll pay one-third of that''; and I submit that with the burdens imposed upon that property, that any purchaser that would pay one dime, or take it as a gift, would be a very poor business man, and the same thing applies here.

The Court: I tried to make it clear at the outset the theory that the court was going to adopt in this case. I can't blame both sides for trying to talk the court out of it, but this lawsuit must end sometime, and I have to stick by that theory. It is too late to abandon it now, and the theory the court is trying to adopt was applied by my predecessor, and he indicated that he would apply it in this case. He applied it to the individual tracts, and that was what we're trying to do here, is to give the District compensation so far as this case is concerned for that part of its property not devoted to irrigation use. Now, it is my theory that the only way to arrive at that is to instruct the jury they must find the values of the property and then segregate them between irrigation and non-irrigation purposes as they existed at the time of the taking, or under the normal conditions would have existed in the reasonably foreseeable future. In arriving at the amount that should be allowed for irrigation and non-irrigation, of course the irrigation plant itself naturally falls into one category; we have the pumping plant, the main canals and laterals; they clearly are irriga-

(Testimony of L. E. Kurtichanof.)

tion properties within the so-called Schwellenbach theory. There is one relatively small piece of property that falls clearly within the other category, wholly of non-irrigation use, [1051] and that is the 80 acres that was testified to. It was testified that it could be devoted for farm uses. It is not needed in connection with the power canal, and not used in connection with the power plant at all, and therefore would fall clearly within the other category.

Then we have the power plant; the power plant itself, the power intake canal, with allied facilities, such as residences of workers and all that, and that part of the transmission line from the plant down to Coyote Junction. That is what presents the real difficulty in this case, because that is used, or was used at the time of taking, partly for irrigation and partly for the sale of power, and applying the theory the court has adopted, the jury must be instructed to segregate the value of that property and allocate it between power and non-power purposes, and it seems to me that the part that is to be allocated to non-irrigation purposes, purposes other than irrigation, is the very value that counsel seeks to bring out here in the question just propounded to this witness, that is, what is the value of this part of the plant, and its output and earning power over and above the duty imposed upon it to pump water to the lands of the District, and that would be imposed in the reasonably foreseeable future under normal conditions at the time of taking, so that the court is presented with this problem: [1052] If this witness is permitted to answer and fix as the value

(Testimony of L. E. Kurtichanof.)

of this property its value with the burden of furnishing water, pumping water, to the District's land, then how is any segregation to be made based upon that value, unless we definitely charge off the burden upon this plant for furnishing irrigation water? In other words, if the witness fixes the value with the burden upon it, and then we ask the jury to segregate, we would be segregating or asking the jury to segregate what is already what I would regard as the value of the plant for other than irrigation purposes, so that I wouldn't have any objection to his answering if that is to be the value submitted to the jury for non-irrigation purposes, but that, it seems to me, is what it is under the theory the court is trying to apply here. I think it is time to recess here. I thought I'd just express my thoughts on the matter here and we could be thinking about it over the noon hour.

Mr. Cheadle: I don't wish to speak at this time. We would like to be heard with regard to this particular question, your Honor, even though we do not want to take issue. I believe we've made our record fully, and I think the government has too, for the purpose of appeal. I think we may have some question as to the propriety of the particular question as propounded, to this witness, [1053] although we do not wish to take issue with regard to the particular phase of the matter.

The Court: We will recess until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p. m.)

Yakima, Washington, February 19, 1947

1:30 o'Clock P. M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I have had the reporter type out a transcript of Mr. Ramsey's question. Do you have a copy of it, both of you?

Both Counsel: Yes, your Honor.

The Court: All right, Mr. Cheadle.

Mr. Cheadle: Your Honor, we believe that the question as put to the witness involves a short-cut in that it would elicit from the witness merely his opinion as to the value to be placed on the power plant less the part thereof to be allocated to irrigation, under the Schwellenbach formula, without the witness having given any testimony which would be any indication to the jury [1054] or the court as to what that allocation made by the witness is. Only one of the witnesses for the defendant District has testified as to such an allocation. He stated the percentage of that allocation, 16.7 per cent, I believe, and then gave the basis for it. We respectfully submit that the allocation of a part of the power plant value, or power properties value, to irrigation is a matter for determination by the jury. It is appropriate to adduce evidence bearing on that, just as it is appropriate to adduce evidence bearing on value, although value in an ordinary con-

demnation case, as in this one, is for the jury to determine. This question as put cuts out, if you like, the determination of allocation by the jury and leaves the jury unable to determine what the allocation is which in the opinion of this witness should be made. Aside from that, your Honor, upon reading the question as transcribed by the reporter, we have no objection to the question other than the objection which we made when the question was first asked, which is for the purpose of preserving our record.

The Court: I see. I think perhaps you will want to say something else after I get through, Mr. Ramsey. I don't want to cut you off from being heard.

Mr. Ramsey: Yes, your Honor, I do. It is my position that this is not in any sense of the word a [1055] short-cut, but that it presents an entirely different basis of valuation than would be presented to the jury by giving to the jury the total production capacity or record as estimated by the witness, the net production as estimated by the witness, and then arbitrarily saying "Allocate 60 per cent of the value that is predicated upon that total earning capacity, or 90 per cent, or whatever it may be, as the value of the property not devoted to irrigation"; that for that reason, that that method of summation ignores entirely the fact that the full burden of the cost of the operation, maintenance, and taxes of that plant falls upon the purchaser, whereas the portion allocated to the District imposes upon the District no burden whatever as to those items.

In other words, this isn't a proposition of a sharing between the District and a prospective purchaser of the cost of operation and the net returns from that operation. The prospective purchaser is faced with this situation, that he is taking over a piece of property on which the entire burden of operation, maintenance, taxes, and what have you falls upon him, and he is receiving from that operation only a certain per cent of the net revenues to be derived from its operation.

Now, as to the question raised by counsel, the ultimate question that we are seeking here is not what—[1056] or the answer to the question that we're seeking here is not what this witness thinks or any other witness thinks, but what in the opinion of a prospective buyer, under all of the circumstances of the property as it stood on the date of taking, would be the value of the property, and he is simply expressing his opinion as to what value would be ascribed to the property by the prospective purchasers under the conditions then existing, that is, the imposition of the burden on the property with a cutting off of a large portion of the net revenues from its operation, and I submit to the Court that that is the only basis that this case should or could be submitted to this jury properly on. It is the only basis that is comprehended under the fair value rule.

The proposition of submitting this thing to the jury on the other angle, that is, here's a power plant that will produce so much power, and so much of that power is available for sale, and if there wasn't

any burden on it at all it would produce so much power, and it would all be available for sale; now, what would a piece of property of this character, relieved of all burden, be worth?; now, what is a certain per cent of that sum?; now, that is the formula that it is proposed to submit this case to the jury on, and I submit to the Court that it does not present at all the question of [1057] fair value in the mind of a prospective purchaser, because he would necessarily have in mind the elements that I have detailed here, the burdens that would be imposed on him, together with the cutting off of a very heavy percentage of his possible net revenue.

Mr. Cheadle: The only reply I wish to make to that, your Honor, is that the testimony of the witness Dibble did not involve, there is nothing in his testimony which gives basis for the conclusion that his 16.7 per cent allocation to irrigation properties did not involve allocation of the other elements of the power properties, such as operation costs and so on. If government counsel did not imply that, I misunderstood his argument.

Mr. Ramsey: I certainly did imply it, for this reason, that if there was any such assumption on the part of the witness Dibble there isn't any basis for it at law. The obligation and burden imposed upon the property does not carry with it the burden upon the District to pay its proportionate share of the expenses of the operation of that property after it is sold.

Mr. Cheadle: If I may advert, your Honor, to Judge Schwollenbach's opinion of June, 1945, which

is the pattern of this trial, he referred to an allocation in his opinion, stated that he recognized that it was [1058] difficult, and I am sure that your Honor as well as all involved in this condemnation proceeding will concede the difficulty, but he stated it could be done and had been done at Grand Coulee Dam and Bonneville, in which allocations he had had some part, and your Honor, if necessary, I have in the courtroom an official document, Secretary of the Interior's report to the Congress on the allocation of Grand Coulee Dam costs as between irrigation and power. The testimony of our witness is as I have just stated it; I have just checked it with him, and of course the question could be determined accurately by reference to the transcript. It is the sort of allocation that has been done numerous times between irrigation and power, and I submit that upon re-reading of the memorandum opinion of Judge Schwollenbach it becomes apparent that that is the very thing he had in mind.

The Court: Well, the Court isn't going to change the theory of the case at this time, certainly, after the defendant's evidence is all in and the case is almost closed; at least I hope so. It was supposed to be finished sometime yesterday, but it is still going on, but this is what troubles me. The Court will instruct the jury that they must allocate the value of the power properties as between irrigation and non-irrigation purposes, [1059] as I said before lunch, and I'm going to instruct them to that effect, but shouldn't the plaintiff or either party be permitted here to come in and offer expert testi-

mony directly as to the market value of that portion of the property which he considers was devoted to non-irrigation purposes at the time of taking? The only consideration I am giving to this question is from that standpoint. I don't want to restrict too narrowly the evidence offered here as to the value of non-irrigation property, or for non-irrigation purposes, and I don't want to be put in the position of shutting out the plaintiff from asking this witness directly, if he wants to, as he appears to have done in my view here, what is the value of this property if you leave aside that portion of it that was devoted or within a reasonable time after taking would have been devoted to irrigation purposes, and that leaves, it seems to me, a residue there which should represent the value of the property for non-irrigation purposes, and I have in mind permitting the testimony to be given and admitted for that purpose only, and so instruct the jury, that they are to consider it only in determining the cash market value of that part of the property devoted to purposes other than irrigation at the time of taking. Now, if there is anything further to be said on that, I'll hear from either side. [1060]

Mr. Powell: I didn't so understand the question, your Honor. I didn't understand the question to be such that the answer elicited would have the results that your Honor has in mind.

Mr. Ramsey: Well, I'll say frankly to the Court that that is not the purpose of the question.

The Court: I see. Well, the objection will be sustained. The court is not going to change its position at this time. I think I have made it clear that you can elicit testimony from any expert as to the cash market value of that portion of it not devoted to irrigation purposes at the time of taking, or in all probability would have been so devoted within any reasonable time, but the objection to this question is sustained. I think it is objectionable from the standpoint the court is trying to follow.

Mr. Ramsey: The Court will allow an exception?

The Court: Yes, of course.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

L. E. KURTICHANOF

a witness called on behalf of the Petitioner, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Ramsey: [1061]

Q. Now, Mr. Kurtichanof, from your examination of the records of the power plant properties, and the demands of the Priest Rapids Irrigation District for power for pumping water on to the lands of the District, did you determine what part or what per cent of the power that could be generated or would probably be generated there in the plant would be required for furnishing power to

(Testimony of L. E. Kurtichanof.)

the District for pumping water for irrigation on the lands in the District?

A. I did not get the last couple of sentences there, Mr. Ramsey.

(Whereupon, the reporter read the last previous question).

A. I did not go beyond the determination of the amount of power required for pumping other than what had been experienced in the eleven year period which I studied.

Q. From the records of that eleven year period, you did make a determination of the amount of power that had been demanded, that is, the proportion of the power generated that had been demanded for irrigation purposes, that is, for power for pumping for irrigation purposes? A. Yes.

Q. And what per cent or part of the power so generated was used for that purpose?

A. Well, expressed in demand, it would be as 1200 kilowatts [1062] of demand is to 2100 kilowatts of generating capacity. Expressed in actual kilowatt hours consumed for the entire eleven year period, it was about 38 per cent.

Q. Now, do I understand from that that 62 per cent of the power generated was left available for sale, or was there further reductions?

A. There were further deductions in the allowance for losses.

Q. And that allowance was how much?

A. Expressed in total kilowatt hours would best illustrate it. The total produced kilowatt hours for

(Testimony of L. E. Kurtichanof.)

the eleven year period was 89,747,000; allowance for losses, 2,749,854; sold to P. P. & L. Company, 52,248,591; the self-consumed and transmission losses then would be 34,748,555. This latter figure would include in addition to that used for pumping, that self-consumed in the generating plant for lighting, heating, and whatever purpose is necessary in the generating plant, a very minor amount.

Q. Does it also include the line loss item on delivery?

A. There was an item included in the adjudication of the P. P. & L. Company's billing where an arbitrary figure of 5 per cent was provided to cover losses in the step-up transformers and in the line for transmitting that portion of the power transmitted to the Pacific Power and Light Company. Other losses would be very minor. [1063]

Q. Now, did you reduce your last figure to per cent for the purpose of showing what percentage of the total production would be available for sale?

A. I did—that is approximately 38 per cent—oh, for sale, you mean?

Q. Yes.

A. Well, it couldn't have been any more than was actually sold, because that is the true experience.

Q. And the amount sold over that period represented what per cent of the total production?

A. The ratio 52 divided by 89.7, or slightly over 50 per cent. 55 per cent roughly.

(Testimony of L. E. Kurtichanof.)

Q. Roughly 55 per cent of the total power produced was available for sale over that period?

A. Was actually sold.

Q. Now, Mr. Kurtichanof, based upon the formula of an allocation of value in the non-irrigation assets of the District, that is, the power plant, the power canal, and the 14.4 miles of transmission line to the figures which you have just quoted, that is, 55 per cent for commercial use and approximately 45 per cent for use by the District, self use in the plant, line loss, and so on, what, in your opinion, was the fair value of that portion of those facilities devoted to the production of commercial power? Do I make my formula clear to you? [1064]

A. I think I understand your question, but I did not make an allocation on that basis.

Q. Well, then, let me ask you this, Mr. Kurtichanof; did you make a determination of the fair value of these properties on the 100 per cent basis, assuming that the entire properties were available for production of commercial power?

A. My assumption was based on a slightly different division of the total properties that we're discussing, which includes the power plant, transmission line and pumping plant. My approach was to assign the pumping plant as an asset of an irrigation district. In other words, I divided this entire property into two components, one comprising the production facilities, generating plant, transmission line; and the utilization end of it with a pumping plant was assigned to the irrigation dis-

(Testimony of L. E. Kurtichanof.)

trict, and I assumed that the production facilities would be available for furnishing the energy required to the pumping plant as one item and to sell the remaining power at the market price, which was then covered by contract with the P. P. & L. Company. On that basis I determined an earning value, which was one component that I considered in determining my estimate of fair value.

Q. Then earning value would be predicated upon the sale of approximately 55 per cent of the energy produced in the plant? [1065]

A. On the performance as actually experienced.

Q. Now, your determination of fair value was not based alone upon that item, however?

A. It was not.

Q. Would it be possible for you to give us your figure on that 55 per cent basis, standing alone?

A. Yes, by taking the production facilities and the transmission facilities, corrected for that arbitrary division that you have made for 1.6 miles of the 16 miles, allocating it to pumping, that could be done, yes.

Q. Will you make that computation for us?

Mr. Powell: Before he makes the computation, if your Honor please, I believe the percentage is 58 per cent instead of 55 per cent.

A. I just figured it roughly in my head.

Mr. Powell: And in addition, I would like to make the objection that it is based on several erroneous elements, one being that for ten years, at least,

(Testimony of L. E. Kurtichanof.)

it was not the plant taken; it was a plant that was inferior, because of the improvements in the canal and the old generator.

The Court: As I understand it, the earnings are only one element that he's taking into consideration?

Mr. Ramsey: That is right.

The Court: Objection will be overruled.

A. That computation will be substantially the same as I gave [1066] you a while ago, wouldn't it, with this exception, that so far we have not talked of another value which I have taken into consideration, and that is intangible value. The matters we have discussed so far are merely the physical values.

Q. Well, now, Mr. Kurtichanof, can you give us your fair value on that plant, and we'll leave it to the jury to make the computation on the percentage basis; what you determine to be the fair value of the plant, that is, the items that I have mentioned, the hydro-electric plant, the power canal, and 14.4 miles of the transmission line, inclusive of intangible values or any other values that you may have ascribed to it? A. Inclusive?

Q. Yes, your ultimate figure as to the fair value of 100 per cent of the entire plant.

Mr. Powell: You have included, counsel, all the other elements of the question?

Q. Any item that you took into consideration in reaching that value, simply your 100 per cent fair value of those items that I have mentioned.

(Testimony of L. E. Kurtichanof.)

A. I have not so computed it in my report, but I can adjust it. I'll have to deduct the cost of the pumping plant from the picture.

Q. And also 1.6 miles of transmission line.

A. Yes. Excluding the pumping plant, excluding the 1.6 miles of transmission line between Coyote Junction and the pumping plant, and figured on the same basis that I figured it before, the fair value that I find would be \$375,477.00.

Q. And that is 100 per cent value?

A. That is depreciated value.

Q. Yes, 100 per cent fair value? A. Yes.

Q. Now, your figure of \$62,788.00 on the pumping plant as the reproduction cost less depreciation should also be adjusted to include the 1.6 miles of transmission line from Coyote Junction to the plant.

A. Yes.

Q. I believe that's the way the other witnesses have handled that, and with the addition of that item to the \$62,788.00 what would be your reproduction cost less depreciation figure for that pumping plant and that portion of the transmission line used only in supplying power to it?

A. \$63,980.00.

Q. \$63,980.00, is that correct? A. Right.

Q. Now, with reference to the power plant site up there, did your examination show that the District owned a considerable acreage of land in the immediate vicinity of [1068] the power site?

A. That information was supplied me by the Army Engineers, and shown on the map given to me.

(Testimony of L. E. Kurtichanof.)

Q. And was that land located along the line of the canal and down to and surrounding the power house itself?

A. Yes, and some below the power house for transmission line right of way.

Q. From your examination of that land and the power plant property, what, in your opinion, is the highest and best use to which that land can be devoted?

A. Well, the first use must be reserved for the operation of the plant.

Q. And why is that necessary?

A. In order to provide access to all features of it, the canal and all, for necessary operation and maintenance.

Q. Is it the ordinary procedure for a hydro-electric company to acquire a considerable acreage of land surrounding its power plant and paralleling its power canal?

A. It is frequently found necessary to buy more land than is actually needed for a right of way or for purpose of occupancy when buying right of way for a power plant development.

Q. And why is that?

A. Because it's just as cheap to buy the entire tract from an owner as it is to buy a portion of it, frequently. It [1069] perhaps impairs the value of the remaining portion to such an extent that it's necessary to buy the rest of it.

Q. Or at least advisable. I think that's all.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

By Mr. Powell:

Q. Mr. Kurtichanof, when you stated that you spent twenty-six days in the field——

A. Yes, sir.

Q. ——surveying this property, or making your examination——

A. That's right.

Q. ——you stated that you spent some time looking over records. That was included in the twenty-six days?

A. Yes.

Q. How much of the time did you spend looking over the records and how much of the time did you actually spend at the site?

A. I think that I was in the office parts of two days, first in company with Mr. Grell, who pointed out to me where the records I was looking for might be found, the drawings is what I was looking for, then he was otherwise occupied, and he left me there to examine the drawings at my leisure to make selections of such as might be of use to me, and that arrangements would be made to provide me copies of any found that I wanted.

Q. When you say that you spent twenty six days in the field, do you mean twenty six days on the project, or does that [1070] include the time you spent in the Pacific Power and Light Company office and in Mr. Hall's office?

A. It included the time I was in Mr. Hall's office, but not in the Pacific Power and Light Company office, because that was in connection with the work after I got my field information.

(Testimony of L. E. Kurtichanof.)

Q. You can't tell us the exact number of days, in other words, that you were actually out there on the land or in the power house, can you?

A. Oh, no.

Q. You did not keep track of it that way, did you?

A. No.

Q. But you did spend a considerable portion, quite a number of days, in actually going over the property, didn't you?

A. I did, yes.

Q. Did you examine the power canal from one end to the other?

A. Yes.

Q. How long were you there with the crew?

A. I was there two days.

Q. And were you with the crew all the time?

A. All the time.

Q. You saw everything they did?

A. Yes, I think so. Of course, there were three or four other men. Some of them might have seen things not of interest to the thing. [1071]

Q. And this profile map that you made, what do you call it, profile sketch, showing the cross sections—

A. No, Mr. Yeoman, the chief of party, made the sketch. He kept the field notes.

Q. That is plaintiff's Exhibit "J." This cross section, the sketch showing cross sections of the canal, was made by Mr. Yeoman under your direction?

A. Yes.

Q. And did you go clear up to the head of the canal, Mr. Kurtichanof?

A. Yes.

Q. Did you see the crib dam up there?

A. I did.

(Testimony of L. E. Kurtichanof.)

Q. You didn't include it in your figures, did you?

A. I did.

Q. Where?

A. As I tried to explain, I took all of these various items, physical structures, in conformance with uniform classification of accounts as practiced by public utilities and required by the Federal Power Commission, and that is one of the elements priced in my hydro-electric power plant.

Q. But you've given us the unit cost of the power canal. Do you include in that unit cost the construction of the crib dam? [1072]

A. No, I have a separate item for the diversion dam.

Q. You didn't give that.

A. It is included in dams and waterways.

Q. That wasn't given, was it, in your direct examination?

A. I don't know whether I was asked that. I have a detail of it.

Q. What item did you include for that, just the total of it?

A. Estimated reproduction cost, \$17,825.00; per cent condition, 60; depreciated value, \$10,695.00.

Q. That is the crib dam?

A. Yes, the diversion dam.

Q. And what about the spillway, do you have that too?

A. That is included in the quantities computed with the canal.

(Testimony of L. E. Kurtichanof.)

Q. Now, did you include any concrete in the spillway construction? A. I did.

Q. Where is that? A. It is in the canal.

Q. You didn't include any concrete in the canal, did you?

A. Well, I have it in my working papers, yes. I didn't show it as a detail. I think I testified as to the total cost, the yardage of excavation, and so on, but I can give you the detail of you wish.

Q. Well, just give us the total figure, if you have it. [1073]

The Court: For the spillway?

Q. For the spillway.

A. No, the items in the spillway are included with the canal, because that is part of the canal.

Q. But my point is, Mr. Kurtichanof, that you didn't include any concrete in the canal construction? You just included the excavation, is that right?

A. Oh, no, no, that isn't right. I perhaps only mentioned the excavation in there in my summary. I described the canal, unlined canal about 10,170 feet in length, with a designed bottom width of 70 feet; for about half of the total distance it is excavated in gravel. The remaining portion is on a natural high water channel of the river, where a minimum excavation was required, and opposite that I show an accumulation of all considerations which I have taken into consideration, which amounts to \$131,465. That includes the concrete found in the spillway, the stop logs, everything that was evident.

(Testimony of L. E. Kurtichanof.)

Q. That includes the crib dam also?

A. No. The diversion dam is a rock filled wood crib structure, approximately 560 feet in length, and an average height of about 6 feet, and I just quoted you the estimated reproduction cost on that.

Q. That is included as an item in addition to the canal? A. Yes. [1074]

Q. Now, speaking of the depreciated cost and depreciated value of the canal, Mr. Kurtichanof—

A. Yes.

Q. —you have given us a figure of—

A. 70 per cent.

Q. —70 per cent condition? A. Yes.

Q. In other words, you've taken off about \$40,000 from the construction cost new of the canal, is that right? A. Yes.

Q. And you said that that had to do more particularly with deferred maintenance?

A. Yes, the accumulated deferred maintenance.

Q. Have you ever operated a power house?

A. I have.

Q. Where?

A. I have operated many power houses, and I just built one, finished one, less than two years ago.

Q. I'm talking about operating one.

A. You mean actually operate the switch board?

Q. I mean take care of the running of it, yes.

A. Not on a hydro plant; I have steam.

Q. Have you ever had anything to do with the maintenance of a canal such as this? A. Yes.

Q. Have you ever done maintenance work on it?

A. Not personally, no.

(Testimony of L. E. Kurtichanof.)

Q. Or supervised it?

A. I have supervised it.

Q. Just how did you propose to get this deferred maintenance work done?

A. Why, it would have to be done in the manner it was originally done, by moving in material handling equipment or earth handling equipment, and dig it out.

Q. You feel it would be necessary to dig out the obstructions in the canal?

A. Yes, I do.

Q. Now, in your survey of the channel of the canal you found that it was widened to some point above the spillway, didn't you?

A. Let me get that again, please.

Q. Well, in your surveying of the power canal, did you find that it was wider to some point above the spillway than it was below that?

A. Wider to some point—beginning at the power house, is that where you mean?

Q. No, beginning at the upper end of the canal, was the canal wider down part way than it was the balance of the way to the power house?

A. Oh, yes, in the vicinity of the cut-off canal and the [1076] natural channel for some distance below it was probably oh, 200 feet wide.

Q. And what about below that point?

A. At the lower point of that is where the construction was in the dump portion of the canal.

Q. And your \$40,000.00 includes taking out this restriction?

(Testimony of L. E. Kurtichanof.)

A. Yes, it appeared considerable erosion slid down from the bank into the canal, heavy boulders.

Q. Did that include removing any rock?

A. No solid rock, no. There was a natural obstruction there where the canal had not been dug to a full width, through a section of rock.

Q. Would it include removing that rock?

A. No, only the deferred maintenance.

Q. Did you in your examination of historical data find out how it happened that this canal was wider down to that point than it was below?

A. Well, I think it is quite evident that it was a high water natural channel of the river that had been improved in part.

Q. Did you consider the possibility, Mr. Kurtichanof, of getting the silt in the channel agitated so that it would be water-borne and go out through the turbines?

A. Yes, I thought of a good many things, but it is very difficult to pick up sediment once it's been deposited. [1077] It would take tremendous velocities to stir it up again.

Q. Did you find out the amount of work that had been done in the canal in 1941?

A. Yes, I had plans and specifications prepared by Mr. Hall covering that work.

Q. And did you find out the work that had yet to be done at that time?

Mr. Ramsey: Just a minute; that is objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

The Court: Objection sustained.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

(Continued)

Q. Did you take measurements of the water in the canal?

A. I did not, not of the flow. I took measurements of the elevation.

Q. Did you take measurements or do you know the amount of water in the river at the time?

A. No, I do not.

Q. Do you know, Mr. Kurtichanof, whether there was enough water in the river at all times during the period that you have been testifying about value——

A. Oh, yes.

Q. ——to run the power plant at full capacity?

A. Oh, yes, and a great deal of excess beyond that.

Q. I believe you stated that you used the uniform system of [1078] accounts?

A. Yes.

Q. Advocated by the Federal Power Commission?

A. Yes, it is prescribed by the Federal Power Commission for use of electric utilities.

Q. It is prescribed, or required?

A. Well, required. I don't get any distinction in that respect.

Q. Well, it is a matter of terms, I believe. Do you have your pamphlet of those requirements with you?

A. Do I have what?

Q. The pamphlet of those requirements with you?

A. No, I have not.

(Testimony of L. E. Kurtichanof.)

Q. There are certain distinctions, aren't there, between generating plants and transmission plants?

A. Oh, yes.

Q. Canals and spillways?

A. You first have production plants, with their subdivisions of water power, steam, Diesel engine, and other, and all their associated divisions; then you have transmission plant, which will include lands, structures, and towers, poles, towers, fixtures, conductors, and things of that nature.

Q. And you did use that in making your allocation of values here? [1079]

A. No, in arranging the various physical items.

Q. Where did you put the transformers in the power house? A. In production plant.

Q. In the production plant? A. Yes.

A. As a matter of fact, the accounts you've been talking about put them with the transmission system, don't they?

A. Sometimes; sometimes they're put into 352, station equipment.

Q. What about 343, station account, transmission plant? A. 343 what?

Q. 343, station equipment, under transmission plant?

A. Yes; now, there's a latitude of choice there.

Q. But you didn't put them in the transmission plant?

A. I did not put them in the transmission plant, I put them in the production plant, I believe; just a minute. Yes, I put them in hydro-electric power plant, in the production plant.

(Testimony of L. E. Kurtichanof.)

Q. Did you give them any value?

A. Pardon?

Q. What value did you give them?

A. The estimated reproduction cost new for the three transformers, each rated 1000 kilowatts, is \$8805.00. Per cent condition was 69, depreciated value \$6075.00. In addition, there was a spare set of windings for one of [1080] these transformers, for which my estimated cost of reproduction is \$700.00, per cent condition 100, depreciated value \$700.00.

Q. Now, going to the power plant structure, Mr. Kurtichanof, you measured the volume in there?

A. Sir?

Q. Did you measure the house to determine the quantities of material?

A. Yes, I measured all available portions. That portion that is not visible, or not easily get-at-able, I took from the drawings.

Q. I believe you said you didn't know whether it was re-enforced or not?

A. The power house structure is re-enforced in certain elements. I said that the pumping plant is probably not re-enforced.

Q. How did you arrive at your value per yard of the excavation of the rock? I see it is the same as the excavation of rock in the canal. Isn't there any difference?

A. No, there shouldn't be, when you take into consideration I provide a coffer dam and un-watering.

(Testimony of L. E. Kurtichanof.)

Q. Well, isn't it necessary ordinarily in putting a power house like this on the side of a rock ledge to excavate in shelves to lessen the danger of the plant sliding or slipping from the pressure of the water above? [1081]

A. The rock foundation is at such an elevation that the structure proper was not in rock. It is only the draft tube and tail race portion that is in rock.

Q. And where did you get that information?

A. From observation in the field. The rock foundation is easily discernible.

Q. And you think that that would require the same kind of—take the same unit cost per yard in excavating for the power house that it would in the canal, where you could just side-cast with a shovel?

A. Well, you could do the same thing here, and there is very little of it.

Q. How did you arrive at your unit cost in the concrete work in both structures, power house and pumping station?

A. I estimated cost of materials.

Q. What price did you use for cement?

A. Oh, I think the market price at that time was around \$3.00 a barrel.

Q. How many sacks in a barrel?

A. 4, usually.

Q. And what kind of a mix was this, 4 or 6 sack mix? Couldn't you use a 4 sack mix for the heavy work and a 6 sack mix for the super-structure?

(Testimony of L. E. Kurtichanof.)

A. No, I don't mix concrete that way any more, that's old-fashioned. [1082]

Q. I see, sir.

A. The mixes are determined by the strength requirements, the mixes of the aggregates and the water and the cement.

Q. Doesn't the cement in the aggregate have something to do with the strength?

A. Yes, I say, in proportion; that is, your aggregates and cement and water in a certain proportion to attain certain strengths, and in mass concrete you don't require great strength; you use a lean mixture.

Q. Well, isn't a 4 sack mix a lean mixture?

A. Well, it depends entirely on your grading of your aggregates. That doesn't mean anything to me. I'm not a concrete expert.

Q. It would make a difference as to the size of the sand or gravel you used in your mix?

A. Well, in order to get the proper concrete you would have to proportion your aggregates in just the right amounts.

Q. I don't mean to argue with you about this, Mr. Kurtichanof. What price did you use for the cement?

A. As I recall, it was around \$3.00 at the market, plus transportation to the site.

Q. \$3.00 a barrel, or \$3.00 per yard of concrete?

A. \$3.00 per barrel of cement.

Q. What kind of mix would you put in the building, to form your figure of \$16.30? [1083]

A. I haven't the details of all that here, no.

(Testimony of L. E. Kurtichanof.)

Q. How do you know it is going to cost \$16.30?

A. I figure that is a reasonable price. You have a number of variables there, you can adjust the cost.

Q. That's what I want to find out, what are they? You realize your figure is just about half of the other men that testified?

A. Yes, less than half in some cases.

Q. And there must be some reason for it?

A. The reason is certain elements of cost are not there that exist in others. Your concrete is very massive there, the walls run up to five feet in thickness. Compare that to a wall eight inches or a foot in thickness; the forming becomes practically an insignificant matter. Furthermore there is plenty of evidence that the aggregates used were obtained right there on the site, natural mix, bank run, requiring a minimum cost for your raw materials.

Q. And where would you put your mixing plant?

A. As convenient to the site as you wish.

Q. Where would you put the mixing plant to mix the cement to put in this building? I presume, Mr. Kurtichanof, you went into this matter just as though you were a contractor going to build this building?

A. Yes.

Q. Would you be willing to build this building and put all [1084] the concrete in there at \$16.30 a yard?

A. I think that would be quite reasonable at the time.

(Testimony of L. E. Kurtichanof.)

Q. I do too, very reasonable, in 1943?

A. Yes.

Q. Prices were kind of high then, weren't they?

A. Not anywhere near what they are now. Average construction cost had only increased about 12 per cent over pre-war 1940.

Q. What would you pay your labor for mixing this cement?

A. Whatever the current wage was at that time. As I recall, it was about a dollar an hour.

Q. How many yards of concrete would you anticipate would be mixed and put in the forms by a man during the day? It is rather hard to estimate, isn't it?

A. Well, that—huh—one man doesn't mix. You have to have a crew of men, and equipment; you have to have material to handle the equipment; you have to have the mixers, wheel barrows or buggies or chutes, or you might have a pump-crete job, so that isn't a reasonable question.

Q. All those things you've mentioned go into the cost of mixing and placing the concrete?

A. That is right.

Q. Did you have any figures on jobs in the State of Washington when you arrived at that figure of \$16.30 a cubic yard? You stated you had some experience in Oregon. [1085]

A. I don't recall whether I had any specific figures in Washington at that time or not.

Q. There was available, wasn't there, a record of the bids on the Roza Project at almost that same time?

(Testimony of L. E. Kurtichanof.)

A. I presume so, and I think perhaps I have it on file.

Q. You don't recall whether you used it or not?

A. No, I don't recall, because I did examine a great many others, but I don't remember them now.

Q. It would cost quite a bit to install a mixing plant down there in a place like that, wouldn't it?

A. No, not too much.

Q. Did you include in your power house figure the cottages for the operators?

A. In the hydro-electric power plant, I did.

Q. What price—what value did you put on them?

A. Operators' cottages, number 1, reproduction cost new, \$4,000.00; depreciated value, \$1000.00. Operators' cottage number 2, reproduction cost new, \$3600.00, depreciated value, \$900.00. Cottage number 3, reproduction cost new, \$3500.00, depreciated value, \$700.00. Schoolhouse—

Q. I don't know that the school-house is in here.

A. It was pointed out to me as irrigation district property at the time.

Q. All right, you can give us the school-house, then. [1086]

A. Reproduction cost new, \$1600, depreciated value, \$400.00. A log cabin, one room log cabin, 12 by 16, reproduction cost new \$150.00, depreciated value \$15.00.

Q. Was it occupied, sir? A. No.

Q. You have given us, then, the figures that you have used in arriving at your value of the entire over-all value of the power property?

(Testimony of L. E. Kurtichanof.)

A. In addition to that I have the lands applicable to this part of the problem, the price of which was given to me, or the estimated reproduction cost of which was given to me by the Army Engineers, that were involved for parcels of land.

Q. All right, could you give us that, please?

A. Yes. Parcel A, which is fully described but amounted to about 104.7 acres, estimated cost \$304.00, per cent condition 100, depreciated value \$304.00. Parcel E, containing 74.8 acres, more or less, appraised at \$75.00, depreciated value \$75.00. Parcel C, containing 90.8 acres, more or less, appraised at \$45.00, depreciated value \$45.00. Parcel D, containing 236.2 acres, more or less, appraised value \$236.00, depreciated value \$236.00, total of lands, \$660.00 new, \$660.00 depreciated.

Q. And that includes all of the land there at the Priest Rapids site, is that right? [1087]

A. Yes, in connection with the hydro-electric power plant.

Q. Now, Mr. Kurtichanof, I'd like you to take, if you will please, a copy of, or rather the original of Exhibit 9, which is the Tinling inventory, and I want you to compare, if you will, please, the values you put on some of the equipment with the values Mr. Tinling has put on them. Will you just start at the first page, please, Item 1, substation. Do you have the item divided as he has?

A. No, I have not. I have no item of substation anyway.

(Testimony of L. E. Kurtichanof.)

Q. You've included the transformers in the price you've already given us? A. Yes.

Q. Now, did you price the two generating units separately? A. Yes.

Q. What was your price on number 1?

A. Unit number 1, reproduction cost new \$45,-793.00; unit number 2, reproduction cost new \$59,-062.00.

Q. Now, what's your depreciated value of unit number 1? A. \$23,354.00.

A. And of number 2? A. \$56,109.00.

Q. Now, as a matter of fact, Mr. Kurtichanof, the production of the unit number 1 in energy kilowatts or power kilowatts or energy kilowatt hours that comes from the generator is just the same as the energy coming from the old [1088] generator, you can't tell the kilowatts made by an old generator from the kilowatts made by a new generator, can you? A. That is true.

Q. It is all the same kind of power?

A. As far as I know.

A. And I believe you said that the depreciation you would compute on a plant of this kind would depend somewhat on whether it was overloaded and whether it was run continuously?

A. That was one of the elements.

Q. Considered with age, obsolescence?

A. Age, obsolescence, wear and tear.

Q. You said it would be almost impossible to replace the number 1 unit, or the wheel, without going to rather prohibitive cost?

A. That is right.

(Testimony of L. E. Kurtichanof.)

Q. I take it, then, that your \$45,000.00 did not reproduce the wheel in its then condition; rather, reproducing a new wheel like the old one?

A. One that would provide the power to drive the number 1 generator.

Q. But you haven't included in that figure a triplex Francis type wheel?

A. No, I have not. [1089]

Q. What kind did you include?

A. A simple Francis wheel—no, I take it back. It was really a composite of prices I had on Francis type wheel, propeller type, and also on a combination type as put out by Leffel, which is more or less of a composite design of reaction and propeller planes. At that time I was getting prices, in fact, firm quotations, on wheels just about the same size.

Q. And in arriving at your depreciation did you take into account the fact that this generator had been shut down part of the time? That would cut down on your depreciation, wouldn't it?

A. Oh, some depreciation continues whether it is in service or not.

Q. Oh, but not as much, I believe you said yourself?

A. Well, that portion that is a function of load would not go on, but there are other elements of depreciation going on.

Q. Now, did you depreciate it because you concluded that it did not have silicon steel?

A. I gave that a matter of depreciation, yes.

(Testimony of L. E. Kurtichanof.)

Q. Why did you depreciate it because it might not have when you did not know?

A. I knew the probabilities were, on account of its age, it did not contain it. [1090]

Q. Did you make any investigation to find out?

A. No.

Q. Do you recall that the Allis Chalmers generator was there when you saw the property?

A. On unit number 1, yes.

Q. Now, going to unit number 2, you have not depreciated that materially, have you?

A. 5 per cent.

Q. Did you go down in the pit and look at the runners in either of these machines?

A. No; unit number 2 was operating continuously every time I was at the power plant. The wheel pit of number 2 was unwatered——

Q. Number 1, you mean?

A. Number 1 unit, the wheel pit of number 1 unit was unwatered. I was down in the wheel pit, but to get into the steel casing, get at the runner, involved quite a job, relieving a lot of bolts and opening up a man hole, and so on. I did not go in.

Q. Now, referring to Exhibit L, which is the map concerning the power plant, Exhibit L is the cross section of the power plant, isn't it?

A. Cross section through about on the center line of one of the units.

Q. The short parallel lines in the center left are the steel [1091] ladder down into the pit, is that right?

A. Into the wheel pit, yes.

(Testimony of L. E. Kurtichanof.)

Q. The exhibit, however, does not show the generator, which is in the place marked "generator unit" or the turbine, does it? A. It does not.

Q. And I will ask you if this exhibit applies to the number 2 unit? Isn't it a fact that the tail race or draft tubes—these, by the way, are the spaces shown in the lower left hand corner of Exhibit L, called draft tubes? A. Draft tubes, yes.

Q. Aren't the draft tubes changed on the number 2 unit?

A. I understand they were changed.

Q. And for what purpose?

A. To adapt them to the new type of wheel.

Q. That is the propeller type of wheel?

A. That is right.

Q. What changes would have been made?

A. Well, either of two changes. I presume the best change would have been to make an elbow type tube out of that, rather than a conical.

Q. For purpose of illustration, the bottom or tapered part of the spacing between the two tubes was cut off, and the upper part sealed off?

A. It would have to be modified quite a bit to provide a [1092] vacuum seal above, and I would judge that it would be built——

Q. There isn't a great deal of difference between your figures and Mr. Tinling's figures in connection with the reproduction cost new of these two generating units, is there?

A. I do not remember the testimony of Mr. Tinling. I have it here.

(Testimony of L. E. Kurtichanof.)

Q. Pardon?

A. Did you want to refer to it?

Q. Yes, will you please?

A. Well, beginning on the first page of Mr. Tinling's, under the sub-head of generating plant equipment, 1, substation, three 200 Ampere, 60 K.V., hook stake operated disconnect switches, priced at \$325.00 total. I found four there, which I have priced at reproduction cost of \$536.00, depreciated value, \$279.00. The fourth one he probably did not test, because it was used for grounding.

Q. No, I had reference particularly, Mr. Kurtichanof, to the generating equipment, that is, the two items of generating units 1 and 2.

A. This is entitled generating plant equipment.

Q. Yes, that's right.

A. Generating unit number 1?

Q. Yes. [1093]

A. All right. My estimated reproduction cost new for the complete unit, which meant the water wheel, the generator and its associated governor, was \$45,793.00.

Q. Oh, I see, you include the governor with that?

A. The governor is always purchased with the wheel except for a replacement or something of that kind.

Q. And what about the exciting equipment?

A. The exciter is a separate unit; both the exciters are separate, independent units. I find about \$19,000.00 difference in the case of generator unit number 1 between my price and Mr. Tinling's.

(Testimony of L. E. Kurtichanof.)

Q. Where did you get your price?

A. Oh, I have prices from different manufacturers on generating equipment.

Q. Do you represent any manufacturers?

A. I do not, but I am supplied renewal sheets and price sheets as prices changes, as data changes; I'm supplied with new sheets regularly.

Q. Have you ever been engaged in the contracting business? A. I have not.

Q. Is your price the price installed, or factory prices?

A. The price sheets I refer to? No, they're manufacturer's prices.

Q. Then they would be factory prices?

A. Factory prices, and sometimes they are freight allowed to [1094] destination, the nearest railroad.

Q. Does your figure of \$45,000.00 allow putting the machinery in? A. Yes.

Q. Where is that item?

A. It appears in the detail.

Q. I thought that was the manufacturer's price of the articles, is that not right?

A. No, this is reproduction cost new, installed, as is.

Q. Now, going to the transmission line, Mr. Kurtichanof, you stated, I believe, that the line was much larger than it needed to be?

A. For the present capacity of the generating plant, and the load that has been imposed on it.

(Testimony of L. E. Kurtichanof.)

Q. In other words, it is big enough to carry the load even if they put in the four new generating units? A. Yes.

Q. Isn't it a fact that the line as now constructed is a large line, and that there is less line loss on a large line than on a small one?

A. Yes, but it is an extravagant way of reducing losses.

Q. You wouldn't deduct from the value of the line because it was too big, and saved money by reducing line loss?

A. If I was to reproduce the line, it would be the height of extravagance. [1095]

Q. But the government is buying that line?

A. Yes, but it is in such depreciated condition you would have to rebuild it, and you would have to build new poles, new cross arms.

Q. I am talking about the wire. The wire is just as good, isn't it? A. It is.

Q. If you were building another line would you take that line down?

A. If I were a prudent purchaser I would look at what I'd have to spend to put that line into serviceable condition.

Q. Let's just talk about the wire a little while. You said the wire was too big for the load it had to carry? A. Bigger than necessary.

Q. It doesn't decrease its value because it is bigger than the load it has to carry?

A. Not for that purpose, no.

(Testimony of L. E. Kurtichanof.)

Q. Then as a matter of fact the wire is just as good as though it were a smaller wire?

A. Its physical characteristics have not deteriorated.

Q. And did you depreciate it because it is too big?

A. Not for that reason, no.

Q. Then the depreciation is entirely in the poles, isn't it?

A. The depreciation is on the line as a completed structure, and the various elements are not capable of being separated [1096] and maintain a complete transmission plant.

Q. You could take the wire off the poles and sell it for more than you want to give us for the transmission plant, couldn't you?

A. No.

Q. Not very much difference, is there?

A. Quite a bit.

Q. Much much?

A. I have exact quotations. As I remember, it was around eleven cents a pound F.O.B. Massena, New York.

Q. You mean you would have to send the wire back there to get a credit on it?

A. Yes.

Q. Couldn't you sell it out here?

A. Nobody but the Aluminum Company of America would buy it at that time.

Q. When was that?

A. In 1943.

Q. Because of government regulations?

A. Some of them, yes.

(Testimony of L. E. Kurtichanof.)

Q. Have you charged us with those in your computations?

A. In computing my salvage value I have some of them, yes.

Q. How about this generating equipment; in 1943, if it weren't for the ceiling prices, people would have paid more for old generators than they would new, wouldn't they? [1097]

A. Well, your guess is as good as mine.

Mr. Ramsey: I don't think we ought to go into the realm of speculation. I object to that line of questioning.

The Court: Well, let's have a question. We'll see if it is objected to.

Cross-Examination

(Continued)

Q. What was the ceiling price on generator number 1 on October 1, 1943—well, you have given us that as \$45,000 new.

A. That is the water wheel and generator with governor, and in place, in operating condition.

Q. What was the ceiling price new?

A. I can't remember.

Q. What was the ceiling price of used generators? A. Oh, I don't know.

Q. As a matter of fact, it was 85 per cent of the new price, wasn't it? A. I don't know.

Q. Well, couldn't all these generators have been sold for the ceiling price?

A. Oh, I presume so.

(Testimony of L. E. Kurtichanof.)

Q. Did you buy or sell any generators in 1943?

A. I bought two.

Q. They were new, weren't they? [1098]

A. Yes; they were incompleated at the time of purchase; they had been allocated to another agency, and then the War Production Board assigned it to our client.

Q. By the way, you say this power house, too, is over-built, as well as the transmission line. Do you depreciate it on that account?

A. I gave it consideration.

Q. You gave it consideration? A. Yes.

Q. Would it increase the value, or decrease it?

A. I don't think I decreased it. I don't recall just how much weight I did give to that element.

The Court: We will take a recess now for ten minutes.

(Short recess.)

Cross-Examination

(Continued)

By Mr. Powell:

Q. Did you find the same number of poles in the transmission line that Mr. Tinling found?

A. I don't remember how many he had.

Q. He had 580.

A. I think I had a few more, because I called pole stubs and push braces as poles.

Q. I see; and you have a copy, have you, of Exhibit 9? A. Yes. [1099]

Q. Would you refer to page 6? A. Yes.

(Testimony of L. E. Kurtichanof.)

Q. You find the items on page 6 to be substantially the things that are required in erecting a pole structure?

A. Yes, the articles are there, but notice the first item, the poles are specified as butt-treated.

Q. You would reconstruct the line with butt-treated poles, wouldn't you?

A. Not as is. If I'm reproducing the system as is, I would use the same poles as found in the line, which would be untreated poles.

Q. Of course, you wouldn't erect a line with stubbed poles either, would you? A. No.

Q. And a lot of them are stubbed, didn't you say? A. Yes, about 84 per cent.

Q. Isn't a lot of the construction on the cliff difficult construction? A. Very difficult.

Q. And some of those poles would cost as much as two or three hundred dollars to erect and install and line up?

A. Well, something of that nature. Perhaps not as high as two or three hundred dollars, but might run as high as, oh, a hundred dollars or so.

Q. How much labor have you figured per pole, or what labor [1100] cost have you figured?

A. On the average pole, about \$5.27.

Q. For labor? A. Yes.

Q. Would you take a contract to dig the hole and set the pole and back fill and align the pole for that amount? A. Yes.

Q. The labor that could be secured in 1943?

A. 1943, yes.

(Testimony of L. E. Kurtichanof.)

Q. That figure was five dollars and what?

A. 27 cents.

Q. Does that include any equipment?

A. All elements of cost other than material. That includes transportation, distribution, and so on.

Q. Going down to the pumping plant for just a moment, Mr. Kurtichanof—— A. Yes.

Q. ——do you have the figure that you've given us on the pumping plant—was that as of April 1, 1943? A. As of September 30, 1943.

Q. Can you give us the figure as of April 1, 1943?

A. I would say that it was substantially the same.

Q. And what about this discharge pipe that you've depreciated to 5 per cent condition?

A. Yes. [1101]

Q. It had been used a season after April 1, 1943 when you saw it, hadn't it?

A. Had been used a season? No, it had not.

Q. Well, practically so; it had been used from April 1 to August 30, wasn't it?

A. Well, I don't know how much use it was subjected to at that time, but it was not used for any irrigation purpose as I understand it.

Q. Do you know which line you looked at that you saw the leaks in? A. Both of them.

Q. They were both in operation?

A. Both under the head between the pump house and the canal, but only one was being used as a dis-

(Testimony of L. E. Kurtichanof.)

charge. Two of the pumps connected in series discharged into the 66 inch line, and the other one discharged into the 72 inch line. They both open into the canal, and unless the head gates are closed at that point the other water flows back into the pipe, back to the gate controlling it in the pumping plant.

Q. You said the efficiency of this plant could be increased by putting in different pumps, is that right? A. Yes.

Q. And if the efficiency of the pumping plant were increased it would take less power, wouldn't it?

A. Yes.

Q. By about 50 per cent, or about one third?

A. Referring to the two pumps connected in series, they each require 450 horsepower to drive, or in the aggregate that is 900 horsepower. A pump designed for the proper head, for the full head, could be driven by a 600 horsepower motor.

Q. That would save——

A. 300 horsepower.

Q. ——save one third of the horsepower now used, or one third of the power now used to operate the two pumps, is that right? There would be a saving of one third?

A. Saving of one third of the 900, yes.

Q. Then there would be a corresponding increase in the commercial power for sale, wouldn't there?

A. Provided there were not other demands, yes.

Q. Well, you're talking about decreasing the demands by increasing the efficiency, aren't you?

A. Yes, that is right.

(Testimony of L. E. Kurtichanof.)

Q. Now, in the operation of the power plant isn't it customary to find a place where you get the greatest efficiency out of your generating units with the water that you have in the canal?

A. Well, you have no control.

Q. Well, you have the wicket gates on your turbines, don't [1103] you?

A. The wicket gates are controlled by your governor.

Q. You can set the governor, can't you?

A. You can set the governor for a constant output with a given head, but if you set those gates at that point, if there is any change in the head, it will also change the output of the unit.

Q. And the governor re-acts?

A. The governor acts to open or close the gates to maintain a certain load.

Q. Then you determine what load you want and set the governor?

A. You can set the governor and block it in any given position, yes.

Q. Now, isn't it customary in the operation of a plant to determine in the operation of your generating units where you get the most efficiency?

A. Well, you can determine it, yes.

Q. Well, to reduce it to a formula, the power that you get from your generating equipment is determined by the head of water and the quantity of water, isn't it?

A. Yes.

Q. And when you vary one you may change the relationship, is that right? [1104]

(Testimony of L. E. Kurtichanof.)

Q. Did you determine in your investigation there what head and what quantities of water got the maximum efficiency out of the plant?

A. No, I did not.

Q. There is, however, a direct relationship between the two, isn't there?

A. There is for a specific design of the water wheel, yes.

Q. Also, when you decrease the head you increase the velocity in the canal, don't you? That is, I mean when you open the gates at the lower end of the canal that increases the velocity of the water in the canal, doesn't it?

A. With a fixed head at the intake, yes.

Q. Well, that is where the head is fixed, there is nothing to change; you can't change the magnitude at the intake of the canal?

A. No, you cannot.

Q. In this particular instance. Then, did you determine what effect it would have on the silt in the canal if the gates were opened at the fore-bay and in the turbines and the silt was allowed to go on through the turbines as a means of disposing of your deferred maintenance?

A. Well, the gates, the head gates controlling the water flow to the water wheel are always open, and the regulation of the flow is taken care of by the wicket gates, [1105] through the agency of the governor. The governor is sensitive to the load which is demanded.

(Testimony of L. E. Kurtichanof.)

Q. But you can set your governor so the wicket gates will be wide open, can't you?

A. Yes, but you'd have no control then over your regulation of speed or frequency.

Q. What I'm talking about is whether you determined how hard it was to move this silt out of the canal?

A. No, I made no attempt to determine.

Q. And did you make any determination as to whether they could gain more power from the generating equipment by decreasing the head at the power plant, and thus increasing the quantity of water?

A. I can't get that relationship. If you decrease the head you decrease the volume of water.

Q. Oh, no; you said yourself if you lower the level of the canal at the power house it is easier for the water to flow through the power house.

A. Yes, but at the same time you're decreasing your cross section of the flow.

Q. You don't decrease the flow in the canal by letting the water run out freely in the lower end, do you?

A. Well, but you will appreciate that the canal is of trapezoidal section, sloping sides. If you decrease the depth at the lower end you also decrease the area. [1106]

Q. But you don't change the area at the upper end, do you? A. No.

Q. What limits the amount of water you get in the canal? Isn't it the size of the intake?

A. Not necessarily, no.

(Testimony of L. E. Kurtichanof.)

Q. What is it?

A. You've got to open it up at the lower end, too.

Q. If you open it at the lower end you get more water in the canal? A. Yes.

Q. Did you determine how far you should open it at the lower end to increase the quantity of water and thus get more power?

A. That doesn't make sense to me, some way or other.

Q. I'm sorry. You have given us the formula that the power is the head plus the quantity of water used? A. Yes.

Q. If you decrease your head you get more water, don't you?

A. I don't see how you can; it is the head that causes the flow.

Q. No, the head at the power house; let's say the difference between the tail race and the fore-bay is the head, isn't it?

A. It is the head, yes, but you have another head, that is, between the fore-bay and the point of intake. [1107]

Q. I see, we're talking about two different heads. The head I'm talking about is the head at the power house. A. Yes.

Q. If you open the gates at the power house, you decrease the head between the intake and the outlet at the power house, in the canal?

A. Well, that pre-supposes you're going to let that water flow through there freely.

Q. That's right.

A. Which is doesn't, normally.

(Testimony of L. E. Kurtichanof.)

Q. Normally it doesn't, but there is a point, isn't there, Mr. Kurtichanof, where you get your maximum efficiency from your generating equipment?

A. Well, you would get your maximum efficiency at the point for which the wheel was designed to produce maximum efficiency, and if you vary that head you will affect your efficiency.

Q. Then you don't think you can change the output of the generating equipment by changing the relationship between the head and the quantity of water?

A. You're bound to, if you change the head, but you have to change the flow, too, at the same time, to maintain a constant power.

Q. That's what I say, you can change the head and thus change the flow in the canal. You did not make any [1108] studies of that, did you?

A. No. I made one observation; it happened the load was rejected at one time, and I watched the elevation in the fore-bay rise, and then when the load was picked up I noticed the fall. That gave me an indication of the hydraulic slope of the canal.

Q. What is the slope?

A. I say at that particular time, that particular condition existing in the fore-bay, in the intake, and the condition of load, as I remember it, the drop was about one and a half feet.

Q. In the entire canal?

A. At the point of gauge, yes; that would be in the canal right at the gauge in the fore-bay.

(Testimony of L. E. Kurtichanof.)

Q. You realized that probably cut down the power production? [1111]

A. That might be one, but there were other elements that were inexplainable.

Q. Well, the principal shutdowns were during months of low water, were they not?

A. In the winter months.

Q. And you don't see any shutdowns during 1942, after the canal was completed, do you? You might take a look at it and be sure, sir.

A. That is right; my recollection is there was no shutdowns.

Q. Then if you give much weight to the years prior to 1941 you don't allow for anything for construction of the new canal, nor for the new generator, do you?

A. Well, that would be again a matter of conjecture, because I have the record for eleven years prior to that, in which for several months the plant was not operating.

Q. And right after that you have the time when the canal was completed and the new generator put in, and there wasn't a single shutdown?

A. Yes.

Q. Don't you think that should be taken into consideration too?

A. Well, I think it got proper consideration for the fact that there was extraordinary production for that year over the other years.

Q. That should increase the value of the plant, shouldn't it? [1112]

(Testimony of L. E. Kurtichanof.)

A. That was an element that was naturally taken into consideration.

Q. In your studies of the historical background of this plant did you find the time when the line was changed over to a commercial line?

A. I believe I did find some reference.

Q. Well, just from your memory; you don't need to look at your records about it.

A. Mr. Grell told me the date; I believe it was about 1912, as I recall.

Q. There was an entire reconstruction of the line at that time, wasn't there?

A. Yes, but I think that he had some data that is not strictly true. I'm not certain as to that. From other historical data it is my recollection that the transmission line as originally built was designed to operate at 22,000 volts, and it gave the spacing of 54 inches, and so on, between conductors, and I think it was about 1912 that it was reported to have been re-insulated, and conductor size increased to what it is now. I think Mr. Grell reported to me that it was 33,000 volts. There was some discrepancy there.

Q. It was actually 22,000 volts, wasn't it?

A. That would be my impression.

Q. There's no argument that this is a 66,000 volt now?

A. That is right. [1113]

Q. Did you take into consideration in fixing your value the reasonable selling price for available power in 1943?

(Testimony of L. E. Kurtichanof.)

A. I took into consideration only the facts as they were, which was a contract to sell at the price stipulated in the contract.

Q. In other words, you valued the property with an encumbrance, if this contract should be fixed as an encumbrance; the only price you considered is the price in the contract, is that right?

A. I took into consideration the facts and all the circumstances surrounding it at the time of my observation.

Q. Did you take into consideration the reasonable earning capacity of the plant?

A. I made some estimates of earnings of that particular plant, under alternative set-ups.

Q. Did you take into consideration the cost of operation and maintenance?

A. Yes, I explored the actual history; tried to find the cost of operation.

Q. You didn't determine the increased output by more efficient operation of the generating equipment, did you?

A. I gave consideration to it to this extent: I studied the history; I estimated the potential capacity if the plant could operate continuously, and I studied the [1114] actual performance.

Q. Did you investigate the opportunities to increase the output in the reasonably near future?

Mr. Ramsey: Just a minute. May I ask that that question be made more definite? By what means?

Mr. Powell: In what relation? In what particular?

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: The question does not indicate by what means he proposes to increase the output of power, and I ask that the question be so framed as to include that.

The Court: What you have in mind is whether it is by more efficient operation, or by remodeling, or improvement?

Mr. Ramsey: That is the point exactly, your Honor.

Cross-Examination

(Continued.)

Q. Well, did you consider it by any means?

Mr. Ramsey: Just a minute; objected to as incompetent and irrelevant.

The Court: I'll sustain the objection.

Q. Did you consider the opportunity by enlarging the canal——

Mr. Ramsey: Just a minute——

Q. Do you want me to finish? By removing the obstructions which you have testified to which existed in 1943? [1115]

Mr. Ramsey: Now I object to that as incompetent, irrelevant, and immaterial.

The Court: I presume by obstructions he means the solid rock.

Mr. Powell: The obstructions he had in determining his cross section test.

The Court: He testified to silt obstruction and solid rock. Perhaps you might particularize.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

(Continued.)

Q. Well, first, by removing the silt in the canal?

A. Not specifically. I reasoned from the performance in some such manner as this; the plant has a potential capacity of 2100 kilowatts, which at the outside, if run at 100 per cent load factor for a year, would produce around 18,000,000 kilowatt hours.

Q. At 100 per cent load factor?

A. Yes. The actual performance was——

Q. Do you want the production in what year?

A. Well, the average performance for the period was something else. The maximum production on record was 12 million plus. I also noted that for several months of the year it did not operate for some reason or the other. It seemed to me in some months there was no explainable reason why they should not operate, in view of the fact that they had a power contract which would enable them to sell [1116] all the power they could produce up to 2400 kilowatts, and that the Pacific Power and Light guaranteed to take it. I speculated on why they did not run in those months, and the only reliable reasons I could think of would be, first, that due to freshets in the summer months which reduced the capacity of the plant, and also due to ice conditions in the winter months which prevented the

(Testimony of L. E. Kurtichanof.)

operation of the plant, but I thought that with proper diligence that output could be stepped up to produce an average of about 14 or 14 and a half million kilowatt hours.

Q. Would that include the removal of the rock obstructions in the canal, Mr. Kurtichanof?

A. No, I did not give—those elements were not given consideration in this. I just merely reasoned from the fact that here we had a performance; here, if everything were such that the plant could run continuously, if it was desired to operate continuously, an expectancy of a certain amount could be obtained.

Q. Now, did you investigate the opportunities to increase the power output in the reasonably near future by removing the rock obstructions you have testified to, concerning your cross section?

Mr. Ramsey: Objected to as incompetent, irrelevant and immaterial. [1117]

The Court: Sustain the objection.

Mr. Powell: If your Honor please, I don't want to argue this matter, but just to state that it seems to me the rule that applies to the land and irrigation of the land should apply to the power plant as well.

The Court: The court ruled on this earlier in the trial. I still make the same ruling, that it is not admissible. It requires substantial investment to accomplish it. Exception allowed.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

(Continued.)

Q. You arrived at your percentages of allocation of the value of the power plant to irrigation, did you, Mr. Kurtichanof?

A. I did not, except as I testified earlier.

Q. I don't think I finished my question. Did you arrive at the percentages you gave in your direct examination by dividing the total amount of power used for irrigation by the total amount produced during the twelve years of operation?

A. May I have your question again, please?

Q. You testified that 58 per cent of the capacity of the plant was available for the production of commercial power, didn't you, and 38 per cent was required for pumping?

A. Yes.

Q. Didn't you arrive at the percentages that you've given by taking the total production of power for the years you have testified to, 1932 to '43 inclusive, and divided by the amount of power used for pumping?

A. Yes.

Q. During those years?

A. Yes.

Q. Now, in arriving at your over-all value here, which you have given as \$375,477.00, I assume that you have given us the figure of the fair cash market value in your opinion, is that correct?

A. Yes.

Q. What have you included for intangible value?

A. I have included a total of \$53,700.00.

(Testimony of L. E. Kurtichanof.)

Q. What is that made up of?

A. That is made up of preliminary expense value, going value, and water rights.

Q. Do you have anything for nuisance value, Mr. Kurtichanof?

A. No, not as such; I don't recognize it.

Q. Well, as a matter of fact, now, it is not entirely beyond the realm of possibility that some power plant might not want to buy this plant so it would be removed from the market for possible production of power by others, isn't it? That is done, isn't it?

A. Not that I know of. [1119]

Q. You've never heard of that being done?

A. No.

Q. As a matter of fact, some agencies pay quite a bit more than power companies are worth to control it, don't they?

A. I don't know.

Q. You did not give that any value?

A. No.

Q. Did you ever buy or sell a power plant?

A. No.

Q. Have you included anything for a contractor's fee?

A. That is included in the——

Q. Preliminary expense, or the going value, or the water rights?

A. ——in the unit prices.

Q. In the unit prices?

A. In the unit prices.

Q. What about overhead?

(Testimony of L. E. Kurtichanof.)

A. Overhead has been added to the total, and is included in these over-all figures of reproduction cost.

Q. How much did you add for overhead?

A. I included 15 per cent for general overheads.

Q. And you say Mr. Tinling was low when he included 8 per cent, wouldn't you?

A. I didn't say.

Q. Well, he is, isn't he, if he includes [1120] only 8 per cent?

A. Well, he might have been talking about other overheads.

Q. Is it customary, or do you customarily figure values by including your contractor's fee is as part of the cost? A. Yes.

Q. Or unit prices?

A. Where a contractor's fee is involved.

Q. Well, you didn't do that in the other cases you testified in, did you?

A. Yes; the contractor has his own indirect costs, which are his overheads, and they're included in the contractor's over-all costs.

Mr. Powell: I think that's all.

Mr. Ramsey: I think that's all.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Ramsey: The government rests.

Mr. Powell: We have very short rebuttal.

Mr. Ramsey: If the court please, counsel has suggested that for the purpose of completing the record both as to the government's case and as to the District's case, it might be well to stipulate in this proceeding at this time, first, as a part of the government's case, that all of the lands within the boundaries of the Priest Rapids Irrigation District were acquired by the government through direct purchase or through filings of declaration of [1121] taking in this proceeding, civil number 128, United States vs. Alberts, and by direct negotiations where the title was acquired by direct purchase. Prior to the filing of declaration number 99, and as a part of the District's case—well, I think I'll let counsel state that himself.

Mr. Powell: That the water right lands that have been referred to here as being the water right lands designated in the Black Rock Power and Irrigation Company case at the time of the taking here did not exceed 2000 acres under irrigation and in private ownership.

Mr. Ramsey: The government so stipulates as to both matters.

The Court: It is agreed as to both those statements, then?

Mr. Powell: Yes, your Honor.

The Court: The record may show that, then, and the jury may receive it as evidence.

WILLIAM S. WEBBER

called as a witness on behalf of the defendant, in rebuttal, being duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is W. S. Webber?

A. Yes, William S., I usually sign it.

Q. Did you formerly reside at Hanford? [1122]

A. I did.

Q. How many acres of land did you have there?

A. My son and I were farming about 120 acres.

Q. Where was your property located with reference to the lower end of the Priest Rapids Irrigation canal?

A. I think we were fourth from the end.

Q. About how many miles from the end?

A. Well, it would be under a mile.

Q. Are you familiar with the Hyer property that was testified to yesterday?

A. Yes, I think there is 10 acres lying between that particular 5 acres and one of my son's tracts.

Q. Testimony was given that this property did not receive adequate water during part of the season because it was so near the end of the canal. What is the fact about there being water at the end of the canal, Mr. Webber?

A. Well, I would say it was the mis-use of water rather than the shortage of water.

Q. In what respect?

Mr. Ramsey: If the Court please, that's not a direct answer to the question.

The Court: I don't believe it is.

(Testimony of William S. Webber.)

Mr. Powell: I think that's right, your Honor.

Q. Did you have plenty of water at your diversion?

Mr. Ramsey: Just a minute. I ask that [1123] the witness answer the previous question.

(Whereupon, the reporter read the question, as follows: "Question: Testimony was given that this property did not receive adequate water during part of the season because it was so near the end of the canal. What is the fact about there being water at the end of the canal, Mr. Webber"?)

A. I don't recall any shortage of water that would materially affect any crops.

Q. To what seasons does that apply?

A. Pardon?

Q. What season does that apply to?

A. What season?

Q. Yes. You say there was no shortage of water. It must have been in some season. Was it 1942, or 1943, or 1941? Well, do you recall of any shortage of water in any of those seasons?

A. No, not that would materially affect the crop.

Q. Would that apply to Mr. Hyer's property?

A. Yes.

Q. In other words, do you know, did he get water on his property during the irrigation season?

A. Yes.

Mr. Powell: That's all. [1124]

(Testimony of William S. Webber.)

Cross-Examination

By Mr. Ramsey:

Q. Well, Mr. Webber, it isn't a question of whether he got water on his property during the irrigation season once, or twice, or half a dozen times, or a dozen times, but did he have water available at all times during the irrigation season, on his land? A. I think so.

Q. Well, do you know?

A. Well, of course, I haven't anything, any data, down. Of course, undoubtedly all through the season on any irrigation canal I would say that water was off, maybe, or shut down to kill the moths in the canal, or something of that effect, of that kind, or a break in the canal, or some interruption.

Q. Was there different times during the season that there was not water available in the canal?

A. I don't think there ever was any irrigation, in that particular irrigation system or any other, that was 100 per cent, water available 100 per cent of the time, in any irrigation system.

Q. Well, let's have a direct answer to the question.

The Court: I'm not sure what the question was. Will you read it?

(Whereupon, the reporter read the last previous question, as follows: "Question: Was there different [1125] times during the season that there was not water available in the canal?

A. Yes, that's true.

(Testimony of William S. Webber.)

Q. Was there times for a day or several days that there wasn't water available in the canal for irrigation?

A. Not to materially affect the crop.

Q. Well, now, that's your conclusion. I'm asking now as to the fact itself. Was there times during the irrigation season where for a day or several days there wasn't water available in the canal for irrigation?

A. Well, there was times during the season that there wasn't any water in the canal.

Q. For several days at a time?

A. Well, if you would mean by several days that it would be over four or five days, I would say no.

Q. Not more than four or five days?

A. That's what I would say.

Q. But there was periods of four or five days when there was no water available in the canal?

A. Well, I have no specific record of it, but I would say that that would be the limit, was the limit.

Q. Now, what sort of crops were you growing Mr. Webber, on your lands there, and your son as well?

A. Well, we were growing orchard and fruit crops, and rye, and vetch, and alfalfa. [1126]

Q. What sort of an operation were you carrying on?

Mr. Powell: I think that's not proper cross examination.

Mr. Ramsey: Well, it is preliminary, if the Court please; what might be adequate water.

The Court: I'll overrule the objection.

(Testimony of William S. Webber.)

Cross-Examination

(Continued.)

Q. What sort of an operation were you carrying on on the place there? A. Us?

Q. Yes.

A. General farming and fruit growing, largely.

Q. Dairying? A. No.

Q. How many acres did you have in orchard?

A. Oh, about 50.

Q. And how many acres in alfalfa?

A. Well, not very many; I don't recall just how it was segregated, now. It's been several years since I've been away from the farm.

Q. Considerable acreage of vetch?

A. Well, we grew vetch largely as a cover crop. We did not make it a practice of growing it as a commercial crop, no.

Q. Well, were you growing any other [1127] money crops except fruit?

A. That was largely our main crop, yes.

Q. Well, now, it's a fact, isn't it, Mr. Webber, that the requirements of row crops, vegetables, and crops of that nature, would be entirely different as to the amount of water and as to the intervals on which the water should be applied, from the requirements of acreage devoted to orchards?

A. Yes, orchard would stand a longer period of drought, or no water.

Mr. Ramsey: I think that's all.

Mr. Powell: That's all.

(Whereupon, there being no further questions, the witness was excused.)

BARRY DIBBLE

recalled as a witness on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination

By Mr. Powell:

Q. Mr. Dibble, have you have any experience in de-silting canals? A. Yes.

Q. Where?

A. Principally on the Minadoka Project in Idaho.

Q. And did you work out any system for de-silting canals? A. Yes.

Q. Was it simple? [1128] A. Yes.

Q. What did you do?

A. We used a disc harrow that was stripped of all accessories and dragged it through the canal, stirring up the silt so that it was put in suspension and then carried on with the current.

Q. How did you drag the disc?

A. Well, at that time, which was 25 or 30 years ago, we used horses attached to the disc with a chain, one team on each bank of the canal, sometimes; sometimes with the disc set so one team could pull it.

Q. Is it possible to use that same type of operation in de-silting the power canal at Priest Rapids?

A. Yes.

Q. Would it cost \$40,000.00 to do that?

A. No.

Mr. Powell: That's all.

(Testimony of Barry Dibble.)

Cross Examination

By Mr. Ramsey:

Q. Mr. Dibble, what type of canal was it that you de-silted?

A. That was an irrigation canal.

Q. Yes. Was that a canal dug through rock and gravel, or a concrete surfaced canal?

A. It was dug through rock and gravel.

Q. And how large a canal was it?

A. Oh, there were very many different sizes of canals, up [1129] to 2,000 second feet capacity, and down.

Q. I don't mean in the manner of capacity, because that would be largely dependent upon or to a considerable degree dependent upon the rate of fall found in the canal, wouldn't it? A. Yes.

Q. But what was the dimensions of the canals themselves?

A. Oh, up to 100 foot bottom, down to probably 6 feet.

Q. You mean 100 feet in width at the bottom?

A. Yes.

Q. Carrying a depth of water of what?

A. Oh, as much as 6 or 7 feet.

Q. Didn't you find it a little difficult to handle a disc harrow in 6 or 7 feet of water with a team on opposite sides of the ditch 100 feet wide at the bottom? A. No, it worked very nicely.

Mr. Ramsey: I think that's all.

(Whereupon, there being no further questions, the witness was excused.)

GERALD D. HALL

recalled as a witness on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination

By Mr. Powell:

Q. Mr. Hall, you've heard the testimony concerning the silting of the new channel?

A. I have. [1130]

Q. And I believe it was stated that an item of deferred maintenance of approximately \$40,000.00 was deducted from the value of the canal on that account. What did the new cut-off channel cost to build?

A. The new cut-off channel from the point of junction of the old channel to the river cost \$8500.00.

Q. And is that where the silting was testified to have been?

A. That's where the majority of the silt is.

Q. And state whether or not that silt goes out when the current increases?

A. Yes, it varies according to stage of the river; can be, by increasing the capacity of the canal through the spillway, kept clear.

Q. What, in your opinion, would be the cost of the deferred maintenance, that is, the de-silting of the canal?

A. That would depend on how you would remove it. If the canal were not enlarged and you took it out by drag line it would probably cost about \$2500.00, \$3000.00. If the canal were enlarged to

(Testimony of Gerald D. Hall.)

the spillway the cost would probably be \$500.00 or \$600.00. It would mean stirring up the river so the silt stays awash.

Q. It would be possible, would it not, to stir up the silt and have it carried out by the water?

A. Yes.

Q. And what method is used for that purpose?

A. Well, at some places a float is used, with a centerboard set cross-wise, and that float is controlled by cables set from the bank; centerboard 10 or 12 feet long, and shift it back and forth, starting at the upper end. That depends on whether you can get enough water to give you velocity at the time. If you can, you can use that method.

Q. And then what happens to the silt?

A. Either wash out through the spillway, or through the plant.

Q. Assuming the condition of the canal as testified to by Mr. Kurtichanof, with reference to silt, what in your opinion would be the cost of putting it back into condition as it was in 1942 when it first built?

A. Well, as I said before, if you take it out with a dragline, probably \$2500.00.

Q. That is the highest it would cost?

A. \$2500.00 to \$3000.00.

Q. Would the other method testified to by Mr. Dibble be a system that might be used?

A. Providing you had capacity down to the spillway. There's a bottle-neck there; you cannot get through the same as you can through the two

(Testimony of Gerald D. Hall.)

entrance canals, that is, below the stages of enlargement. At certain stages you could use Mr. Dibble's method. If it was enlarged you could [1132] use the other one.

Q. In other words, the canal as it existed in 1943 was the same as a 6 inch pipe leading into a 3 inch pipe?

A. That's right.

Q. And it slows down the velocity of water above?

A. That's right.

Q. Now, you have stated, Mr. Hall, on your direct examination, that the measurements you took showed 78 second feet of water in the main canal, through the pumps?

A. That is correct, when I tested the pump for efficiency.

Q. Pardon?

A. When the efficiency test was run on the pump.

Q. Reducing that to acre feet, how much does that amount to during the season?

A. That would be in round numbers, 176 a day, and depending on the length of the season, I believe they had a six month season there, about 35,000 acre feet on a 200 day season.

Q. And what would be the loss through evaporation and seepage before deliveries in that particular system?

A. Well, I'd estimate that at about 25 per cent. That is more than our test showed in the canal at one particular spot.

Q. Then was there adequate water to irrigate 2,000 acres?

A. Yes. [1133]

(Testimony of Gerald D. Hall.)

Q. In the year 1942? A. Yes.

Q. And 1943? A. Yes.

Mr. Powell: That's all.

Cross-Examination

By Mr. Ramsey:

Q. This de-silting operation, you propose to agitate the silt in the new entrance or channel cut into the canal, is that the idea?

A. Yes, when you have sufficient volume of water.

Q. Now, by what means do you propose to keep that in suspension for the two miles down to the power house?

A. Wouldn't attempt it; you would try to divert it at the spillway.

Q. Well, in order to divert it at the spillway, you would require sufficient water to be above the level of that spillway, wouldn't you?

A. No, there are openings below the crest of the wall, spillway openings.

Q. Yes, but those openings are considerably below the level of the canal as they existed out there the day the jury viewed it, aren't they?

A. Oh, yes, the bottom of the openings is below the bottom of the canal, opposite the openings.

Q. That you think would operate to remove the silt down as far as the spillway there?

A. That would remove the bulk of it, if the stage of the river was right. You can't do it at low water, because there isn't enough capacity.

(Testimony of Gerald D. Hall.)

Q. But it wouldn't remove it in that portion between the spillway and the canal—I mean between the spillway and the power house?

A. No, but your velocities are higher there, for the same quantity, so it would carry better through there.

Q. Any silt you agitated from there on down would necessarily pass through the wheels down at the plant, wouldn't it?

A. That's right.

Q. Wouldn't that have a very eroding effect on the wheels?

A. Depends on the size. There's been sand and silt going through for years. That's been one of the difficulties. Each year as the water gets low and increases the velocity they have some silt and sand going through the wheels.

Q. That would be small material?

A. Yes; however, they do on governor changes at times get some rocks in; however, that isn't the common operation.

Mr. Ramsey: I think that's all.

(Whereupon, there being no further questions, the witness was excused.) [1134]

Mr. Powell: The defendants rests.

Mr. Ramsey: The government rests.

The Court: I will ask the jury to step out just a moment.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I didn't want to embarrass anyone, so I thought I would have the jury step out before I asked you how much time you wanted for argument. Anybody might hesitate to ask for a long time with the jury present.

Mr. Ramsey: Frankly, if the Court please, we've got a mass of evidence here, and if argument to the jury is to do any good at all, it should be long enough to cover the mass of evidence, particularly from the viewpoint of the government, because all the witnesses nearly are on the District's side of the case. I don't want to take any longer in argument than is absolutely essential, but I would very much dislike being cut down to less than an hour and a half.

The Court: Would an hour and a half be sufficient?

Mr. Powell: Yes, your Honor, I think it is a little bit more than we will need; however, I'd rather [1135] defer to counsel's wish in that matter.

Mr. Ramsey: I submit that an hour and a half may be more than counsel needs, but he has only to go into the testimony of a single witness, whereas the government has to go into some three or four witnesses on value alone.

The Court: I'm not inclined to restrict argument. The case has lasted a good many days, and there is quite a lot involved. If that is acceptable,

I'll allow an hour and a half. I have another case set for tomorrow. It is not a jury case. I thought I might be able to get started on that by about 3 o'clock if we started at 9:30. Is there any objection to that?

Mr. Ramsey: None at all.

The Court: If we have an hour and a half, and perhaps twenty minutes for the court's instructions, we could get through by 3 o'clock, and I could have some time on the other case. I'll call the jury in, then, if that is acceptable.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: Now, gentlemen of the jury, the case is all through except the argument of counsel and the court's instructions, and that will take perhaps a little [1136] more than half a day. I want to get the case to you as soon as possible, and get it out of the way, as I have another case set for tomorrow, not before a jury. We'll start at 9:30 tomorrow morning instead of 10. Is there anyone who can't conveniently get here at 9:30? If not, then, we'll meet at 9:30 instead of 10. The court will adjourn until 9:30.

(Whereupon, the Court took a recess in this cause until Thursday, February 20, 1947, at 9:30 o'clock a. m.) [1137]

Yakima, Washington, February 20, 1947

9:30 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: For the information of counsel in their argument, I will state rather briefly and generally how I propose to instruct the jury in this case.

(Whereupon, the Court advised counsel the instructions that would be given to the jury in this cause.)

Mr. Powell: May I inquire, we have opened and closed the evidence; will be also open and close the argument?

The Court: Yes, that was my understanding at the outset, that since you have the burden of going forward with the evidence in the trial, that you will follow the same procedure in the argument, but I don't believe, it is my view, that that does not or should not alter the burden of proof that the law imposes upon the government, taking the property, to prove what the compensation should be. [1139]

Mr. Powell: There is a lot of evidence here in the record, too, in connection with our respective legal theories, and it is my understanding we will reserve that for your Honor and not for the jury.

The Court: Yes, there are a number of questions involved here. Under the application of the theory

here, the verdict will cover only compensation for that portion of the property not devoted to irrigation purposes. We will have a finding of value, however, as to the rest of the property. Now, it seems to me that is about all we could do with the jury here, and the other questions that will arise as to how to make a credit for the money paid on the bonds, and such as that, it was my view that that should be taken care of when we come to the matter of entering the judgment on the verdict, and I see no reason why, if it is necessary, that additional evidence could be put in at that time, although I don't know what it would be. I think the record is fairly complete now. Have you any ideas on that, Mr. Ramsey?

Mr. Ramsey: Well, you mean as to the last matter brought up?

The Court: Yes.

Mr. Ramsey: I don't see where that would be involved at all in the case so far as the jury is concerned. It is a matter of the court determining its [1140] formula.

The Court: Yes, I think so. It would be confusing to the jury to try to inform them what the claims should be. I have the responsibility of determining what the law is, and I'll submit it in this way, and then of course you make your record by your exceptions and your proposed instructions. Is there anything else, then, before we start the argument? Oh, I'll excuse the alternate after I've instructed.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: You may proceed with the argument.

(Whereupon, Mr. Powell made a closing address to the jury on behalf of the defendant; Mr. Ramsey made a closing address to the jury on behalf of the petitioner, and Mr. Powell made a final address to the jury on behalf of the defendant.)

Whereupon, the Court charged the jury as follows:

The Court: Members of the jury, you have heard the testimony and the argument of counsel and it is now the duty of the Court to instruct you as to the rules of law by which you are to be guided in your deliberations. It is your duty to accept these instructions as the law, and to follow them. You should consider them as a whole [1141] and not place any undue emphasis on any part or portion of them.

In this case, the petitioner, the United States of America, has acquired for public use, as it had a right to do, the properties of the defendants described in the amended petition. It is not disputed that at the time of taking, the legal title to all such properties was vested in the defendant Priest Rapids Irrigation District, and, so far as you are concerned, that defendant is entitled to all of the compensation to be paid for the properties taken. Therefore, for convenience, throughout these in-

structions, I shall refer to the Priest Rapids Irrigation District as if it were the only defendant.

The Constitution of the United States and the Constitution of the State of Washington provide that no private property shall be taken for public use without just compensation being made to the owner. It is your duty, in this case, to determine, under the instructions of the Court and the evidence submitted to you, the just compensation that should be made to the defendant for the taking of the properties involved.

The burden of proof is upon the United States to establish by a fair preponderance of the evidence the just compensation that should be paid. By "burden of [1142] proof" is meant the burden of producing evidence which fairly preponderates over the opposing evidence. The term "fair preponderance of the evidence" means the greater weight of the evidence. It is that evidence which carries the greater convincing power to your minds, regardless of the number of witnesses who may have testified on one side or the other.

Just compensation or property taken for public use includes all of the elements of value that inhere in such property, and corresponds to the full, fair, cash, market value thereof. "Cash, market value" is the amount for which the property would be sold at the time the property was taken in a sale for cash between an informed owner, willing but not compelled to sell, and an informed buyer, willing but not compelled to buy. Therefore, in determining the just compensation to be paid to the owner,

you should take into account all considerations shown by the evidence which you believe might fairly be brought forward and reasonably be given weight in negotiations between such a seller and such a buyer. The question whether or not the owner was willing to sell his property or have it condemned should not be considered by you. An owner may not want to part with his property because of its special adaptability to his own use, but this fact should not be taken into account [1143] in fixing fair, market value. Similarly, you should not consider the need of the property by the United States in determining its market value. The fact that the United States needed the property in no way serves to increase its market value, and consideration of that circumstance has no place in your deliberations.

Frequently, market value is established by actual sales of similar property, currently made in a free and open market. However, as there is not a sufficient number of sales to establish such a value for electrical properties and irrigation systems, in determining the market value of such properties consideration should be given to various factors which have a bearing on the market value. In determining fair, cash, market value, you should give consideration to the estimated cost of reproduction new; the estimated cost of reproduction new, less depreciation; the earnings and the capitalized earnings of the properties; the uses to which the properties were being put; the highest and best use for which they were or might be suitable and available

in the reasonably near future; and all the factors, facts, and things, shown by the evidence which you think such a willing seller and such a willing buyer as I have heretofore described to you would take into consideration in arriving at an agreement as to price. You are not controlled [1144] or bound by one or more of the elements or factors just enumerated to you, nor are you required to give them equal weight or force. It is for you to determine what weight, if any, you give to each and all of such elements and factors.

By "cost of reproduction new" of a property is meant what it would cost to reconstruct, or reproduce, any of the units of the properties existing at the time they were taken, under conditions and at prices for materials and labor prevailing at that time. "Depreciation" is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence.

Although capitalization of earnings may not be considered by itself as a measure of value of the property, you may consider it as one of the elements which would be taken into account by an informed seller and an informed buyer in arriving at a mutually acceptable price. In any consideration you may give to capitalization of earnings, you are not to assume any rate at which earnings would be capitalized, but you are to determine for yourselves, under the evidence, a rate of capitalization.

You are instructed that in determining the value

of the properties in this case, you must have in mind the date of taking and fix the values as of such date, that is, fix the values of the irrigation properties as of April 1, 1943, and of the power properties as of October 1, 1943.

Because of the peculiar and complex legal problems involved, you will be asked to find separately the value of the property of the defendant devoted and applied to irrigation purposes and the value of its property devoted and applied to purposes other than irrigation at the time it was taken by the United States. The value of the irrigation property will be stated by you in answer to a special interrogatory submitted to you by the Court. The value of the non-irrigation property, only, will be embraced in your general verdict. Later on, I shall give you more detailed instructions on this point.

Testimony has been given in this case by witnesses who are called "experts." The testimony of such witnesses is admitted in cases where the values of properties, such as those involved here, are in issue. An "expert" witness is one who is skilled in any particular matter, or possessed of particular knowledge concerning any such matter, acquired by study, training, observation, or experience. You are not bound by any expert testimony [1146] but it should be considered by you in connection with the other evidence in the case.

At the outset of this trial you were taken to view the properties involved. This was done in order that you might better understand and evaluate the

testimony to be given and also to aid you in coming to a correct conclusion as to the just compensation to be awarded to the owner of the properties. The evidence consists of what you have seen of the properties, as well as of the testimony of the witnesses who have appeared in Court. That which you have seen and that which you have heard from the witness stand are both to be duly weighed and considered.

You are the sole and exclusive judges of the evidence and of the credibility of the several witnesses and of the weight to be given to the testimony of each. In weighing the testimony of a witness you have a right to consider his demeanor upon the witness stand, his apparent fairness or lack of fairness, his apparent candor or lack of candor, the reasonableness or unreasonableness of his testimony, the interest you may believe he feels in the result of the trial, and any other fact or circumstances arising from the evidence which appeals to your judgment as in any way affecting his credibility. You may give to the testimony of each of the witnesses [1147] just such degree of weight as in your judgment it is entitled to receive.

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except in so far as the same may be corroborated by other credible evidence in the case.

In arriving at your verdict you are not permitted to add together different amounts representing the respective views of different jurors and to divide the total by 12 or by some other figure intended to represent the number of jurors or ideas represented. Such would be a quotient verdict and would be contrary to law and to your oath. Under your oath you are only permitted to return a verdict for that amount which, in your honest judgment under the evidence and these instructions, represents the just compensation to be paid by the petitioner to the defendant.

You are instructed that in your determination of the value of the property, you are not to consider the property as carrying either any benefits or any burdens of the contract between the district and the Pacific Power & Light Company, as to which contract there has [1148] been testimony. The provisions of that contract and testimony regarding it are evidence which you may take into account in determining value, just as other evidence regarding earnings and their capitalization may be considered as one of the elements to be taken into account in arriving at the value of the property. The weight to be given evidence regarding that contract, like the weight to be given other evidence on earnings and capitalization of earnings, is for you to determine.

There have been received in evidence four certified copies of water appropriations which are received for the limited purposes of showing whether the defendant district had, at the dates of taking,

the right to divert from the Columbia River sufficient water for irrigation and power purposes as was required by it, or might be required in the reasonably near future, and you shall consider such water appropriations only in the light of the use being made of them on the dates of taking, or such use as might have been made of them by the district within a reasonable time thereafter.

Under the circumstances and the law as construed and applied by the court your verdict must be limited to a finding of just compensation for only that part of the defendant's properties involved in this action devoted to purposes other than irrigation purposes. First, you [1149] should find and include in your verdict the full, cash, market value of any property of the defendant which you find from the evidence was not in any part, or to any extent, devoted to irrigation purposes. Then, you should include in your verdict also that portion of the power properties of the defendant not devoted to irrigation purposes. In order to do that, you must make an allocation of the value of the power properties of the defendant between irrigation and non-irrigation purposes. You should first find the full, cash, market value of such electric power properties, namely, the power plant with its allied facilities and the power transmission line from the power plant to Coyote Junction. Then you should determine in what fractional part or percentage such power properties were devoted and applied to non-irrigation purposes at the time of taking, or which, in all probability, would have been so applied

within the reasonably near future. You should then include in your verdict that part or percentage of the value which you find from the evidence was so applied and devoted to non-irrigation purposes.

You will be asked to find separately, in answer to a special interrogatory, the cash, market value of that part of the defendant's properties involved in this action which was devoted and applied to irrigation purposes [1150] at the time of taking. This interrogatory finding of value should include the fair, cash, market value of the irrigation works of the district, namely, the pumping plant, the power transmission line from Coyote Junction to the pumping plant, the main and lateral irrigation canals, and that part or percentage of the power plant and the transmission line from the plant to Coyote Junction devoted and applied to irrigation purposes at the time of taking, or that would have been so devoted and applied in all probability within the reasonably near future.

In short, members of the jury, you are to divide and allocate the cash, market value of defendant's properties in accordance with its irrigation and non-irrigation uses and purposes. The non-irrigation value which you find should be included in your general verdict. The irrigation value which you find should be included in your statement of value in answer to the special interrogatory. The sum of these two amounts, the amount of your general verdict and the amount of your answer to the special interrogatory added together, should equal the fair, cash, market value of all of the properties of the defendant involved in this action.

In determining and making your allocation of the value of the defendant's power properties to irrigation [1151] and non-irrigation purposes, you may take into consideration the generating capacity at the time of taking of defendant's power plant, the demands upon the plant for power to pump water to irrigate the lands then under irrigation in the district, or that in all probability would have been under irrigation within the reasonably near future, and the excess of power for commercial sale remaining after such irrigation demands had been met. You may also take into consideration any other pertinent facts and circumstances shown by the evidence, which may aid you in making such allocation.

This being a condemnation case, the State law governs as to the number of jurors required to agree upon a verdict and when ten of your number have agreed upon a verdict, it shall be returned into Court and shall stand as the verdict of the jury. Likewise, only ten of your number are required to agree upon your answer to the special interrogatory submitted by the Court. When you retire to your jury room to deliberate, it will be your duty to select one of your number as Foreman. He will return your verdict when you have agreed upon it and will communicate with the Court, if necessary. You will take with you to the jury room the amended petition for condemnation; the exhibits in the case; the notes which you have taken during the trial; a [1152] blank form of verdict; and a blank form of special interrogatory.

The blank form of verdict, omitting the formal heading, reads as follows:

“We, the Jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant, Priest Rapids Irrigation District, not devoted and applied to irrigation purposes, is \$.”

The form of special interrogatory reads as follows:

“What was the fair, cash, market value at the time of taking of that part and portion of the properties of the defendant, Priest Rapids Irrigation District, taken by the United States, devoted and applied to irrigation purposes? Answer: \$.”

The jury will retire for just a few minutes, and then will come back in again.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: The clerk has prepared an index list of exhibits that I think would be helpful to the jury. Have you any objection to sending it out with the exhibits? [1153]

Mr. Powell: We have no objection to that, your Honor.

The Court: Will you stipulate to that, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

The Court: You may now take your exceptions, gentlemen, beginning with the defendants.

Mr. Cheadle: If the Court please, the defendant District takes exception to the Court's refusal to grant instruction number 5. I might state to your Honor that I was attempting to keep an account upon these instructions as your Honor instructed the jury, and if I have misunderstood or not gotten all of your Honor's instructions it is due to my own shortcomings. I believe that instruction number 5 was refused. It is the one which reads as follows: "You are instructed that just compensation may be more or less than the District's investment. The District may have acquired the property for less than it is worth, or it may have paid a speculative or exorbitant price. The value may have changed substantially while the property was held by the District" and so forth. We submit, your Honor, that it was error to refuse that instruction, because it is in accordance with the law as laid down by the Supreme Court of the United States in the Olson case, appearing [1154] in volume 292 of the official United States Reports, and particularly because in this case, in questions and in some of the testimony, there has been placed before the jury what the jury might well imply as a situation in which they were to take into consideration what the District paid.

The Court: I might say, Mr. Cheadle, that I refused that instruction because I thought there was no basis for it in the evidence. There was no evidence of historical book cost or other book cost

of this property, and there was an offer to prove what the District paid for it at the time the District acquired the property. Objection was sustained to that, and it was not admitted.

Mr. Cheadle: That is true, your Honor but there was evidence of the amount of bonds issued for the purpose of acquiring at the receiver's sale.

The Court: Well, there was evidence of the amount of bonds outstanding at the time the District started, but was there any evidence that was all paid to the receiver?

Mr. Cheadle: No, your Honor, but there was evidence as to the amount of bonds which were issued by the District at the time it acquired the property at the receiver's sale. As I recollect, it was \$125,000.00. Moreover, the evidence introduced with regard to earnings [1155] during this period, 1932 to 1942, we submit has the same sort of bearing as evidence as to what the owner paid for the property. Will the Court permit me to group my statement with regard to more than one instruction?

The Court: Oh, yes.

Mr. Cheadle: Instructions 9 and 10, your Honor——

The Court: I might say that I am not trying to interfere with your making exceptions. I thought it might be helpful for you to know the reason I refused to give it; also if counsel for the government thinks any instruction should have been given I would appreciate his comments on that, because we don't want to get error in this record.

Mr. Cheadle: The defendant District takes exception to the Court's refusal to grant instruction number 9 and instruction number 10. Instruction number 9, your Honor, presents the defendant District's position, which has been argued as frequently before this Court as has the government's position. I think I need say nothing further in regard to that. Instruction number 10 we believe comes within the same category, although it is based on the facts as brought out in the trial, namely, that the irrigation properties were taken by the government on April 1, and that therefore, on October 1, when the power properties were taken, there just could not be [1156] any burden upon the power properties to serve the irrigation system of the District. We believe that instruction number 10 is a variation and directed at a particular situation, but is still in the same category as instruction number 9, and for the purpose of saving time, if the Court will permit, we will base our grounds for exception regarding those two instructions on the same grounds as stated in our exception to the Court's rulings at the outset of this trial, and if the Court will permit, I will hand to the reporter a copy of those earlier grounds which were stated in writing and placed in the record.

The Court: I see no objection to that if Mr. Ramsey has no objection. I think a statement of your reasons should appear at this point. You may make them by handing the reporter a copy.

Mr. Cheadle: Very well.

(The following inserted in the record by the reporter at the direction of Court and counsel.)

The defendant Priest Rapids Irrigation District notes exception to the Court's rulings that compensation will not be allowed for the district's so-called irrigation properties and will be allowed only for the district's so-called non-irrigation properties; that part of the value of the district's power properties will be allocated to and included with the district's so-called irrigation [1157] properties and no compensation allowed for said part; that the value of the so-called irrigation properties shall be determined by the jury for limited purposes such as aiding in disposition of the questions arising from payment of the district's bonds with money deposited in the registry of the Court at the time of filing of the declaration of taking, to the exclusion of an award for said irrigation properties; and that the trial before the jury will be conducted accordingly. Said rulings having been announced by the Court in chambers, a procedure agreeable to counsel for both the petitioner and the defendant district, the appropriate occasion for making this exception a matter of record is in connection with the petitioner's objection and the Court's ruling, just made, since they involve the conflicting legal positions of the petitioner and defendant district and the Court's rulings thereon announced in chambers.

This exception by the defendant district is based on the following grounds:

1. The Court's rulings deny to defendant district the constitutional protection of the fifth amendment to the Constitution of the United States of America: "nor shall private property be taken for public use, without just compensation;"

2. The Acts of Congress under the authority of [1158] which the Government instituted this condemnation proceeding, and which Acts of Congress are recited in the original and amended petition in Civil No. 128 and in the amended petition and declaration of taking in Civil No. 128-99, require that there be determination of just compensation for the district's properties which in this condemnation proceeding the Government has taken in the exercise of its power of eminent domain;

3. That proceedings under the Declaration of Taking Act (40 U.S.C. 258a) and its provisions for deposits paid into the registry of the Court and for vesting of title in the Government are merely ancillary to the main condemnation proceeding, and cannot be used as a device for avoiding the basic constitutional and statutory requirement that in this condemnation proceeding there be a judicial determination and award of just compensation for the district's property—a use which the Government has attempted in Civil No. 128 and which the Court's rulings partially allow;

4. The pleadings and record in Civil No. 128 show that in the previous proceedings in No. 128

there has not been any determination or award of just compensation for the defendant district's properties;

5. The "acquisition policy" of the War Department and the Government's contention in support thereof, which [1159] the Court's rulings uphold in part, cannot properly be construed as more than a claim to part or all of the compensation award for the district's properties, which claim should be considered, if at all, after determination of the amount of the award and not as a device for evading determination and award of compensation; and

6. The "acquisition policy" of the War Department and the Government's contentions are based on the Government's construction of state statutes and decisions which are not applicable to the situation of the defendant district, or which at least have never been held applicable, and which this Court's rulings of June 1, 1946, and February 11, 1947, properly leave for State Court determination, as to the district's non-irrigation properties, but as to irrigation properties—erroneously decide in the Government's favor "on the basis of preliminary guesses regarding local law."

The defendant district requests that this exception not be deemed waived or jeopardized in any way during the course of the trial by reason of interrogation of witnesses or introduction of evidence in a manner that is in accordance with the Court's rulings to which this exception is taken.

(End of insertion.)

Mr. Cheadle: The defendant District takes exception [1160] to the Court's refusal to grant instruction number 11. That instruction begins as follows "You are instructed that in arriving at your verdict you should disregard evidence and testimony regarding the relations and transactions after April 1, 1943" and so forth; and your Honor, we take exception also to the Court's refusal to grant instruction number 12, and I believe it may be deemed in the same category as instruction number 11, and reasons stated for both exceptions. Instruction 12 reads "You are instructed that in determining the value of the property you are to disregard the testimony you have heard" and so forth; your Honor, as I heard you instruct the jury I am sure that some of what we have submitted in those requested instructions 11 and 12 was incorporated in your Honor's instructions. However, we feel that we must take exception to the refusal to grant our requested instructions 11 and 12, because in those requested instructions we have deliberately requested rather specific instruction on the law bearing on those matters. It is our position, your Honor, that those matters are irrelevant to the issues in this condemnation case, but because of questions asked by government counsel, some testimony elicited by government counsel, and what appears particularly regarding the power company contract in government counsel's address to the jury, we believe that [1161] it was error to refuse to grant those instructions, and that the jury should have been instructed as we request.

Mr. Powell: If your Honor please, may I add, I think in order to keep our record we should except to your Honor having given an instruction asking that the property be valued separately, so that we may keep our record and theory throughout the case, we want to except on the same ground as the exception previously given as to 9 and 10, given to the reporter and inserted in the record. We feel that all the property should be valued as one, and the District compensated for all.

Mr. Ramsey: If the Court please, I seem to be unable to locate my copy of petitioner's requested instructions 1 and 2.

The Court Yes, you had just two that you proposed.

Mr. Ramsey: Yes; thank you. To the Court's failure and refusal to give to the jury petitioner's requested instruction number 1, as follows: "You are instructed that the petitioner United States of America prior to the filing of declaration of taking 99 had already acquired by direct purchase and by the filing of declarations of taking all of the lands within the boundaries of the Priest Rapids Irrigation District, and was at the time of the filing of declaration of taking 99 the fee owner of all lands within the boundaries of the [1162] said Priest Rapids Irrigation District, and I further instruct you that by the acquisition of the title to all of the lands within the District the petitioner acquired an interest amounting to the full beneficial use to all of the facilities of the Priest Rapids Irrigation District and that said Priest Rapids Irrigation

District retained only the naked legal title” and so forth; I need only say that that defines the government’s position in this proceeding, and exception is taken to the Court’s failure to give the instruction in line with the record made by the petitioner throughout the trial of the case.

Instruction number 2, “I instruct you that since under declaration of taking 99 the petitioner United States of America took from the Priest Rapids Irrigation District only the naked legal title, not coupled with any beneficial interest in and to the properties of the district in said declaration of taking described, your verdict in this case should be for a nominal sum only”; to the failure to give this instruction, and the refusal to do so, the petitioner excepts for the same reason.

The petitioner United States of America further excepts to the instruction of the Court in which the jury was instructed that the burden of proof in this proceeding rested upon the government. The government’s position in that matter is that if the opening and closing of [1163] the case and the order of the case is changed, the burden of proof shifts with it.

To the instruction of the Court to the jury instructing them that in fixing the value, the fair value, of the properties of the district not devoted to irrigation they might capitalize the earnings of the, or rather, the estimated earnings of the district, or of the operation of the plant and the power facilities, the government excepts—I don’t think I have made that clear; strike “the government excepts”

—as one element establishing or tending to establish the value of the properties, the government excepts for the reason that any computation or capitalization in this case would necessarily be predicated upon a sum to be determined by the jury at a rate to be determined by the jury, and that it takes them into the realm of pure speculation.

To the instruction of the court instructing the jury that they may consider defendant's exhibits 5, 6, 7, and 8 as the basis for their right to divert and use water for irrigation and for power purposes, the government excepts for the reason that it is the contention of the government that the exhibits cannot serve as the basis for any rights involving water rights at all, and that they do not tend in any way to establish any water right, and therefore could not be considered by the jury [1164] for that purpose.

To the Court's instruction to the jury instructing them that they may and should determine the value of the district's non-irrigation properties by a computation of the per cent or fractional part of the properties which are devoted to strictly non-irrigation use, and a determination of the fair market value of those properties, and an award equal to the percentage or fractional part determined by the jury to be devoted to non-irrigation use, the government excepts as not being a proper formula for determination of fair market value, even under the theory that the case is submitted to the jury.

To the Court's instruction instructing the jury that 10 of its number may return a verdict in this

case, the government excepts as not being provided for or contemplated under Federal procedure.

Mr. Cheadle: If the Court will permit, the defendant district would like to make one comment about one exception taken by the government. If I heard government counsel correctly, the government took exception to your Honor's instruction regarding the burden of proof. Burden of proof I believe in all the previous proceedings in civil number 128 has been upon the government in the many trials. We point particularly to what I understood to be government counsel's reason, or at [1165] least part of his reason for exception, namely that the order of presentation of the case to the jury having been changed, certainly the burden should not be upon the government. Your Honor, it is the recollection of both counsel for the irrigation district that in the court's chambers when your Honor announced that in this trial the burden of proof would be on the government, government counsel himself requested that the defendant district go forward first in the case, because in view of the government's position that there should be nothing more than nominal compensation paid, he would have been in a very peculiar position if he had to put on proof first, and it was at his request, and with no statement, I believe, your Honor, at that time that he would use that reason for attacking your Honor's ruling that the burden of proof would be on the government. It was for that reason only, and without any such attack indicated at that time, the government counsel asked that the district proceed first, and we acceded to his request.

Mr. Ramsey: May it please the Court, the order of proof is not in itself a reason for the exception to the instruction as to the burden of proof resting upon the government; rather the fact that counsel for the district have exercised the right to open and close argument in the case. Counsel is very much in error [1166] when he states that in previous cases where this condition has existed, this order of proof has been changed, that the government has borne the burden of proof. That, as I recollect it, is not the case at all, but in those cases the burden of proof shifted to the defendants in the case.

The Court: My understanding or my recollection of what occurred in chambers is the same as Mr. Cheadle has just stated, substantially that Mr. Ramsey said that since the government's position was that the defendants were entitled only to very nominal damages, that it would be very awkward to open, and he suggested that the defendants go forward with their evidence first. As I recall, I said at that time it was a matter for counsel to determine what order of proof should go forward, that I had no objection to the defendant opening the evidence first, but as I recall, I stated at that time the court would not regard the changing of the order of proof as changing the burden of proof, which I understand is that the government has the burden of showing the just compensation to the land owner. I am still of that view.

Mr. Ramsey: In view of the Court's understanding, and in view of counsel's understanding of that situation, the government withdraws its exception

to the portion of [1167] the Court's instructions instructing the jury that the burden will rest upon the government.

The Court: Is there any further comment to be made here?

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: Perhaps the record should show that the clerk is handing the members of the jury the notes which they have taken under stipulation during the trial.

The alternate juror, Mr. Flanagan, will be excused at this time. Thank you, Mr. Flanagan. Counsel have stipulated that the jury may take with them to the jury room in addition to the things enumerated in the court's instructions an index list of the exhibits, prepared by the clerk.

(Whereupon, the bailiffs were sworn and the jury retired at 3:17 o'clock p.m. to deliberate upon its verdict.)

(Recess, and the court was re-convened at 8:15 o'clock p.m.)

Mrs. Fowles: Your Honor, Mr. Ramsey won't be here.

The Court: All right. In this case we have what is very unusual in Federal Court, a verdict and also an interrogatory in which it is necessary that only 10 [1168] jurors concur. I am not sure whether either side would want to poll the jury. If so, I

am a little doubtful whether it can be done; it would be disclosing the manner in which the two jurors voted if they voted against the verdict. I think, however, the record should show as to what number concurred. Would it be acceptable to counsel if I ask the foreman what number concurred in the verdict and in the interrogatory?

Mr. Powell: Yes, your Honor.

The Court: I'll follow that procedure, then. Bring in the jury.

(Whereupon, the jury returned into Court at 8:17 o'clock p.m.)

The Court: Let the record show that all 12 of the jurors have returned to the courtroom and are seated in their places. Have you reached a verdict, members of the jury?

The Foreman: Yes, sir.

The Court: And how many of your number have concurred in your verdict?

The Foreman: Unanimous.

The Court: And you have returned an answer to the interrogatory?

The Foreman: Well, we separated the power part from the other. [1169]

The Court: You answered that?

The Foreman: Yes.

The Court: And how many concurred in that special interrogatory?

The Foreman: That was unanimous.

The Court: I see. Pass up your verdict and the special interrogatory.

Verdict

“We, the jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant Priest Rapids Irrigation District not devoted and applied to irrigation purposes is \$473,356.00. P. E. Nickerson, Foreman.”

Special Interrogatory

“What was the fair cash market value at the time of taking of that part and portion of the properties of the defendant Priest Rapids Irrigation District taken by the United States devoted and applied to irrigation purposes? Answer: \$365,845.00. P. E. Nickerson, Foreman.”

The Court: The verdict and the special interrogatory and the answer will be received and filed. I will excuse the jury now until Monday morning at 10 o'clock.

(Whereupon, the Court adjourned at 8:20 o'clock p.m.) [1170]

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held at Yakima, Washington, on February 10, 11, 12, 13, 14, 17, 18, 19, and 20, 1947.

That the above and foregoing, consisting of 8 volumes containing pages numbered consecutively 1 to 932 inclusive, contains a full, true and accurate transcript of the proceedings had therein, including all objections and the Court's rulings thereon and exceptions thereto.

Dated this 21st day of May, 1947.

/s/ STANLEY D. TAYLOR
Official Court Reporter

In the District Court of the United States for the
Eastern District of Washington, Southern Di-
vision.

No. 128-99

UNITED STATES OF AMERICA,
Petitioner,
vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation, et al.,
Defendants.

DEFENDANT PRIEST RAPIDS IRRIGA-
TION DISTRICT'S REQUESTED
INSTRUCTIONS

Comes now the defendant, Priest Rapids Irriga-
tion District and requests that the Court give the
attached instructions to the jury.

MOULTON & POWELL

J. K. CHEADLE,

Attorneys for Priest Rapids
Irrigation District.

Instruction No. 1

You are instructed that when ten of your number
have agreed upon a verdict, the foreman shall sign
it and return it into Court. [1173]

Instruction No. 2

You are instructed that in determining the value
of the properties in this case you must have in mind
the date of taking and fix the values as of such date,

that is, fix the values of the irrigation properties as of April 1, 1943, and of the power properties as of October 1, 1943. [1174]

Instruction No. 3

You are instructed that in fixing just compensation you shall take into consideration all of the evidence which has been admitted. Evidence has been introduced of the reproduction cost new, of the reproduction cost less depreciation and of the capitalization of earnings. All are elements to be taken into consideration in arriving at your verdict but no single one should be considered by you as controlling.

Instruction No. 4

You are instructed that just compensation includes all elements of value that inhere in the property but it does not exceed market value fairly determined. The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of the value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held. That value is the amount that in all probability, considering all the circumstances, would have been arrived at by fair negotiations between an owner willing but not required to sell, and a purchaser willing but not required to buy. In determining that amount there should be taken into account all considerations that

fairly might be brought forward and reasonably be given substantial weight in such bargaining. [1176]

Instruction No. 5

You are instructed that just compensation may be more or less than the defendant district's investment. The district may have acquired the property for less than its worth, or it may have paid a speculative and exorbitant price. The value may have changed substantially while the property was held by the district. The returns earned by the property may have been greater or less than interest and other carrying charges. The Government may not confiscate the benefits, or be required to bear the burden, of the district's bargain. The district is entitled to be put in as good a position pecuniarily as if its property had not been taken. It is the property and not the cost of it to the district that is safeguarded by the Federal Constitution. [1177]

Instruction No. 6

You are instructed that there have been received in evidence four certified copies of water appropriations which are received for the limited purpose of showing whether the defendant district had, at the dates of taking, the right to divert from the Columbia River sufficient water for irrigation and power purposes as was required by it, or might be required in the reasonably near future, and you shall consider such water appropriations only in the light of the use being made of them on the

dates of taking, or such use as might have been made of them by the district within a reasonable time thereafter. [1178]

Instruction No. 7

You are instructed that, although capitalization of earnings may not be considered by itself as a measure of value of the property, you may consider capitalization of earnings as one of the elements which would be taken into consideration by the fully informed buyer and seller in arriving at the fair market value. You are further instructed that in any consideration you may give to capitalization of earnings you are not to assume any rate at which earnings would be capitalized, but that you are to determine for yourselves a rate of capitalization. And, I repeat, capitalization of earnings may not be used as a measure of value, but may be considered as one of the elements which may enter into determination of the value of the property. [1179]

Instruction No. 8

You are instructed that in your determination of the value of the property, you are not to consider the property as carrying either any benefits or any burdens of the contract between the district and the Pacific Power & Light Company, as to which contract there has been testimony. The provisions of that contract and testimony regarding it are evidence which you may take into account in determining value, just as other evidence regarding earnings

and their capitalization may be considered as one of the elements to be taken into account in arriving at the value of the property. The weight to be given evidence regarding that contract, like the weight to be given other evidence on earnings and capitalization of earnings, and like the weight of all of the evidence admitted at the trial, is for you to determine. [1180]

Instruction No. 9

You are instructed to determine the value of all of the property of the Priest Rapids Irrigation District described in the amended petition No. 128-99. That covers both the so-called irrigation properties and the so-called power properties. Although evidence bearing on the value of those two classes of district property has been segregated from time to time during the course of the trial, you are instructed to arrive at a verdict in a lump sum amount for all of the property. [1181]

Instruction No. 10

You are instructed that the district's irrigation properties were taken by the Government for military purposes on April 1, 1943, and that it thereupon became impossible for the district to serve the purposes for which it was formed and had operated. There was no obligation on the part of the district after April 1, 1943, to operate the irrigation system and consequently no burden on the district's power properties to furnish irrigation pump power on October 1, 1943, the date of taking of the power properties. Accordingly, you are instructed that it is your duty to determine the value

of the power properties without reference to any obligation to produce and deliver power for irrigation purposes.

Filed February 17, 1947. [1182]

[Title of District Court and Cause.]

PETITIONER'S REQUESTED
INSTRUCTIONS

I.

You are instructed that the petitioner, United States of America, prior to the filing of Declaration of Taking No. 99, had already acquired by direct purchase and by the filing of declarations of taking all of the lands within the boundaries of the Priest Rapids Irrigation District and was, at the time of the filing of Declaration of Taking No. 99, the fee owner of all lands within the boundaries of said Priest Rapids Irrigation District.

I instruct you further that by the acquisition of the title to all of the lands within the District, the petitioner acquired an interest amounting to the full beneficial use to all of the facilities of the Priest Rapids Irrigation District, and that said Priest Rapids Irrigation District retained only the naked legal title not coupled with any beneficial interest to all of the properties of the District.

I instruct you further that under Declaration of Taking No. 99, the petitioner, United States of America, took from the Priest Rapids Irrigation District nothing more than the naked legal title

to the properties of the District, and that the value of said naked legal title was and is only a nominal sum. [1183]

Instruction No. II.

I instruct you that since, under Declaration of Taking No. 99, the petitioner, United States of America, took from the Priest Rapids Irrigation District only the naked legal title not coupled with any beneficial interest in and to the properties of the District in said Declaration of Taking described, your verdict in this case should be for a nominal sum only.

Filed February 18, 1947. [1184]

District Court of the United States, Eastern Division of Washington, Southern Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT.

VERDICT

We, the jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant, Priest Rapids Irrigation District, not devoted and applied applied to irrigation purposes, is \$473,-356.00.

P. E. NICKERSON,
Foreman.

Filed Feb. 20, 1947.

[Title of District Court and Cause.]

SPECIAL INTERROGATORY

What was the fair, cash, market value at the time of taking of that part and portion of the properties of the defendant, Priest Rapids Irrigation District, taken by the United States, devoted and applied to irrigation purposes?

Answer: \$365,845.00.

P. E. NICKERSON,
Foreman.

Filed Feb. 20, 1947.

[Title of District Court and Cause.]

STIPULATION

Pursuant to Rule 75(h) of RCP, it appearing that by inadvertent error, or accident, there was omitted, from previous designations of record on appeal in the above cause, the transcript of the oral opinion of the Court given on March 7, 1947 in connection with entry of judgment upon the verdict.

It is stipulated between parties to the above-entitled cause that there be included in the record on appeal to be certified and transmitted by the Clerk of the District Court the transcript of court pro-

ceedings in the above entitled cause had in Yakima, Washington on March 7, 1947.

/s/ BERNARD H. RAMSEY,
Attorney for Appellant
United States of America

MOULTON & POWELL,
/s/ J. K. CHEADLE,
Attorneys for Appellee Priest
Rapids Irrigation District.

[Endorsed]: Filed Aug. 7, 1947.

[Title of District Court and Cause.]

ORAL OPINION OF COURT, 3/7/47

Be it remembered, that the above entitled cause came on before the Honorable Sam M. Driver, Judge of the above entitled Court, at Yakima, Washington, on March 7, 1947, for entry of judgment upon the verdict of the jury; the petitioner United States of America being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendant Priest Rapids Irrigation District being represented by Charles L. Powell and J. K. Cheadle, its attorneys; whereupon, the following proceedings were had:

(Argument by Mr. Powell and Mr. Ramsey.)

The Court: I might indicate what the Court's view is. It seems to me that we have to solve these problems presented here today in the light of the

situation as it exists, and not what might be the situation if this district were in liquidation in this Court, or if the bondholders were coming in for payment of past due obligations.

The Court has endeavored to apply a formula here that would be equitable and fair to both parties in this very unique and unusual situation that is presented. It is one that was conceived by my predecessor, but I have no disposition to try to avoid responsibility, because it seems to me in a very difficult situation it is just about the most equitable thing that could be done. In this situation we have endeavored to segregate the assets of the District not devoted to irrigation purposes from those devoted to irrigation purposes.

Under the judgment which the Court has accepted here, or the view that the Court has taken of the judgment to be entered, the District is to be compensated directly only for a portion of its property, the portion of its property not devoted to irrigation uses. Ordinarily, of course, in a condemnation case the property owner is compensated for the full cash market value of the property. The theory on which this land-owner is compensated for only a portion of the property is that the government has already in effect paid the equivalent of the value of the irrigation assets of the District in its payment to the individual land-owners within the District. The land is purchased as irrigated lands with the water right attached, that is, with the water right or the duty of water to which the land was entitled by reason of being included in the irrigation district.

It seems to me that under that theory, regardless of what might be true in other situations, that the equitable thing to do is give the District credit for the bond payment out of the value which the jury has found in the special interrogatory for those irrigation properties. It seems to me that in this situation, while it may be said that the government has paid for the value of the irrigation assets of the District in paying the individual land-owners, it has paid them less what might be the bonded indebtedness outstanding against the District at the time the individual tract was purchased or condemned. In other words, I assume and I think the record shows that in these individual land cases the amount of the assessment for bond retirement was shown and the amount of the bonded indebtedness of the District, and obviously a water right of an individual land-owner would be lessened in value directly to the extent of the outstanding bonded indebtedness of the District which served him his water. If it would take \$10.00 an acre to pay off the bonded indebtedness of the District, it seems to me that would lessen the value of the water right and the value of the land with the water right attached to that extent; so it seems to me under the theory which the Court has endeavored to apply throughout this case that the equitable thing is to provide that the value found for the irrigation properties be applied to the payment of money advanced or paid into the registry of the Court and used for the retirement of bonds to the extent it

may be necessary, in view of the fact that the value of the irrigation assets found is greatly in excess of the amount of the bonds.

As to the second question raised here, I think that was decided in the proceedings brought in this court to determine whether or not the action in the State Court should be enjoined. While it is of course the duty of this Court to determine in a condemnation case with the aid of a jury if one is not waived not only what compensation shall be made to the owner of the property taken, but also to determine the persons entitled to take the compensation, here the Court takes the view that the Priest Rapids Irrigation District, although deprived of all its property, is still a legal entity, a municipal corporation under the laws of the State of Washington, and all this Court needs to determine is that the compensation should be paid to that District as a legal entity. The District being a municipal corporation of the State, under the statutes of the State the proper place for liquidation is in the State Courts, and that action already having been started, I think it is proper to provide that the funds ultimately be paid into the State Court in which the District is being liquidated.

I have no doubt that this case will be appealed, and these questions that I'm deciding now won't be difficult for an appellate court to decide, because they are simply questions of law which that Court can decide as well as I can. I hope all the questions will be decided by the appellate court so we won't be left to guess what should be done about this case and the companions case.

Mr. Ramsey: May the record show that the government objects and excepts to the entry of the judgment in this case?

The Court: Yes, all right.

REPORTER'S CERTIFICATE

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held at Yakima, Washington, on March 7, 1947.

That the above and foregoing contains a full, true and accurate transcript of the Court's remarks in connection with entry of judgment on verdict of the jury.

Dated this 4th day of August, 1947.

/s/ STANLEY D. TAYLOR,
Official Court Reporter.

[Endorsed]: Filed Aug. 7, 1947.

[Title of District Court and Cause.)

PROPOSED JUDGMENT ON VERDICT

The above entitled action having come on for trial before the undersigned Judge of the above entitled Court on February 10, 1947, the petitioner, United States of America, being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and June Fowles, Special Attorney, Department of Justice, and the defendant, Priest Rapids Irrigation District appearing by Charles L. Powell and J. K. Cheadle, its attorneys, and no other persons appearing in the trial of said action, and the jury having been duly impaneled and sworn to determine the just compensation to be paid for the taking of the property condemned, and having under order of the Court viewed the properties, witnesses having been sworn, and testimony having been taken, and the jury having been instructed to return its general verdict determining the value of the power properties as of October 1, 1943, and having been requested to answer a special interrogatory determining the value of the irrigation properties as of April 1, 1943, and the jury having returned its verdict finding the power properties to be of the value of \$473,356.00, and having made answer to the special interrogatory determining the irrigation properties to be of the value of \$365,845.00, and

It further appearing to the Court that there has been paid into the registry of the above entitled Court as estimated just compensation for the taking of the full fee simple title of the properties hereinafter described, the sum of \$170,500.00, which was

paid into this Court on May 12, 1944, and the Court being duly and fully advised in the law and in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the [1187] verdict and special interrogatory to the jury finding and determining the just compensation in the sums above set forth be and the same are hereby confirmed and approved, and

It Is Further Ordered, Adjudged and Decreed that the total amount of the compensation, being the full, fair market value of all properties of the Priest Rapids Irrigation District, is as follows:

Irrigation properties as of the	
date of taking April 1, 1943. . . .	\$365,845.00
Power properties as of the date of	
taking October 1, 1943.	\$473,356.00

and that the full and total sum of all damages resulting to the persons and parties interested therein by reason of the taking and appropriation by the United States of America of the hereinafter described interests in and to said properties and full compensation for the taking thereof is the sum of \$839,201.00, being the amount fixed by the jury by its general verdict and by the special interrogatory as hereinabove set forth for the condemned interests in said property, and

It Is Further Ordered, Adjudged and Decreed that there be and hereby is vested in the United States of America, petitioner herein, the full fee simple title in and to the following described properties, to wit: [1188]

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North Range 23 East, W. M., to the Southeast corner of Section 12 Township 13 North Range 23 East, W. M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1,

Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along

the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary

of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by

deed recorded in volume 136 of Deeds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

and

It Is Further Ordered, Adjudged and Decreed that the only person having an interest in or to the compensation above fixed is the Priest Rapids Irrigation District, a public corporation, and that there be and hereby is included in favor of the Priest Rapids Irrigation District, a public corporation defendant herein, and against the United States of America, petitioner herein, a deficiency judgment in the sum of \$668,701.00, with interest thereon at the rate of 6% per annum from May 12, 1944, until paid, together with interest from April 1, 1943, on \$365,845.00, to May 12, 1944, and interest from October 1, 1943, to May 12, 1944, at the rate of 6% per annum on \$473,356.00, and

It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, with interest, and the whole thereof, shall be paid into the registry of the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of Priest Rapids Irrigation District, and that pending the determination by said Superior Court as to the parties entitled to receive the funds comprising said deficiency judgment, with interest, that the proceeds of said judgment shall be held in this Court subject to payments therefrom for the purpose of meeting

expenses of said district in this condemnation action and in the dissolution proceeding upon authority for said payments by said district, approved by said Superior Court and this Court.

Done By The Court this day of March, 1947.

.....

United States District Judge.

Refused March 7, 1947.

SAM M. DRIVER

District Judge.

Filed March 7, 1947. [1192]

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In The District Court Of The United States For
The Eastern District of Washington, Southern
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT, a
public corporation,

Defendant.

JUDGMENT ON VERDICT

The above entitled action having come on for trial before the undersigned Judge of the above entitled Court on February 10, 1947, the petitioner, United

States of America, being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and June Fowles, Special Attorney, Department of Justice, and the defendant, Priest Rapids Irrigation District, appearing by Charles L. Powell and J. K. Cheadle, its attorneys, and no other parties appearing in the trial of said action, and a jury having been duly impaneled and sworn to determine the just compensation to be paid for the taking of the property, condemned, and having under order of the Court viewed the property, witnesses having been sworn, and testimony having been taken, and the jury having been instructed to return its general verdict determining the value of the power properties of the Priest Rapids Irrigation District, less the portion of the value thereof which the jury found was required for irrigation purposes, and pursuant to said instruction the jury having returned its general verdict in the sum of \$473,356.00 as being the value so determined as of October 1, 1943, and the Court having instructed the jury to answer a special interrogatory determining the value of the irrigation properties, including that portion of the value of the power properties found to be required for irrigation purposes, and the jury having returned an answer to said special interrogatory determining the value of said irrigation properties to be \$365,845.00 as of April 1, 1943, and

It further appearing to the Court that there has been deposited in the registry of the above entitled Court the amount of estimated just compensation for the taking of the property hereinafter described,

the sum of \$170,500.00, which said sum was deposited on May 12, 1944, and [1193]

It further appearing to the Court that the sum of \$170,500.00 was paid in liquidation of the bonded indebtedness of the Priest Rapids Irrigation District, which said bonded indebtedness was a lien upon the irrigation properties of the Priest Rapids Irrigation District, and that the deposit of the sum of \$170,500.00 in the registry of the above entitled Court as estimated just compensation for the taking of all of the property of the Priest Rapids Irrigation District shall be a charge against the Irrigation properties only and no other sum shall be paid by the petitioner herein as just compensation for the taking of said irrigation properties, and the Court being duly and fully advised in the law and in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the verdict of the jury finding and determining the just compensation in the sum above set forth for the power properties of the Priest Rapids Irrigation District be and the same is hereby confirmed and approved; and

It Is Further Ordered, Adjudged and Decreed that the total amount of compensation, including the full and fair market value of the power properties, less that portion of the value thereof devoted to irrigation, as of the date of taking, to-wit: October 1, 1943, and the full sum of all damages resulting to the persons and parties interested therein by reason of the taking and appropriation by the United

States of America of the hereinafter described interests of said properties, and just compensation for the taking thereof is the sum of \$473,356.00, being the sum fixed by the verdict of the jury as hereinabove set forth for the condemned interest in said power properties; and

It Is Further Ordered, Adjudged and Decreed that the value of the irrigation properties of the Priest Rapids Irrigation District as of April 1, 1943, was the sum of \$365,845.00, which said sum is in excess of the bonded indebtedness of the Priest Rapids Irrigation District as of said date, and in excess of the amount deposited in the registry of the above entitled Court by the United States of America, petitioner herein, and paid by the Clerk of this Court pursuant to order of Court, in discharge of said bonded indebtedness, and that said bonds and said amount paid into Court be charged as a lien upon said irrigation properties, and not otherwise, and that there shall be no compensation paid to the Priest Rapids Irrigation District for the taking of said irrigation properties, [1194] but that said bonds and said amount of estimated just compensation deposited in the registry of this Court are adjudged to be liquidated by said irrigation properties; and

It Is Further Ordered, Adjudged and Decreed that there be and hereby is vested in the United States of America, petitioner herein, the full fee simple title in and to the following described properties, to-wit:

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, W. M.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North Range 23 East, W. M., to the Southeast corner of Section 12 Township 13 North Range 23 East, W. M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 26 East, W. M.; to the

Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452. All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-

of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary of said section; thence East along said North bound-

ary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418,

under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

and

It Is Further Ordered, Adjudged and Decreed that the only person having an interest in and to the compensation above fixed is the Priest Rapids Irrigation District, a public corporation, and that there be and hereby is entered against the petitioner, the United States of America, and in favor of the defendant Priest Rapids Irrigation District, a judgment for the sum of \$473,356.00, which judgment shall bear interest at the rate of 6% per annum from October 1, 1943, until paid, and

It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, and the whole thereof, shall be paid into the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of the Priest Rapids Irrigation District, and that pending determination by said Superior Court as to the parties entitled to receive the funds comprising said judgment with interest, the proceeds of said judgment shall be held in this Court subject to payments therefrom for purposes of meeting the expenses of said Priest Rapids Irrigation District in this condemnation action and in said dissolution proceeding upon authority for said payments by said district, approved

by the Superior Court of the State of Washington, in and for Benton County, and by this Court, and

It Is Further Ordered, Adjudged and Decreed that title to the hereinabove described interests in the above described properties be and the same is hereby vested in the United States of America, petitioner herein, as to the irrigation properties as of April 1, 1943, and as to the power properties as of October 1, 1943, which said title is free and clear of any and all charges, interests, claims, taxes, liens and encumbrances of any kind or character whatsoever.

Done By The Court this 7th day of March, 1947.

SAM M. DRIVER,

United States District Judge.

Presented by:

CHARLES L. POWELL,

Of Attorney for Defendant
Priest Rapids Irrigation
District.

Filed March 7, 1947. [1198]

[Title of District Court and Cause.]

MOTION FOR ORDER AMENDING JUDG-
MENT ON VERDICT BY STRIKING

Comes Now the petitioner, United States of America, and moves the Court for an order herein amending the judgment on verdict entered in this proceeding on the 7th day of March, 1947, as follows: By striking from page 6 of said judgment on verdict all of Paragraph 2 reading as follows:

“It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, and the whole thereof, shall be paid into the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of the Priest Rapids Irrigation District, and that pending determination by said Superior Court as to the parties entitled to receive the funds comprising said judgment with interest, the proceeds of said judgment shall be held in this Court subject to payments therefrom for purposes of meeting the expenses of said Priest Rapids Irrigation District in the condemnation action and in said dissolution proceedings upon authority for said payments by said district, approved by the Superior Court of the State of Washington, in and for Benton County, and by this Court, and”

upon the grounds and for the reason that said Paragraph improperly directs that the deficiency judg-

ment in this proceeding be paid into the Superior Court of the State of Washington, in and for the County of Benton, instead of into the registry of this court, and further improperly provides for payments to be paid from said sum only upon the approval of said Superior Court of the State of Washington, in and for the County of Benton.

Dated this 12th day of March, 1947.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Filed March 13, 1947. [1199]

[Tile of District Court and Cause.]

NOTICE OF HEARING ON MOTION TO
AMEND JUDGMENT ON VERDICT BY
STRIKING.

To: Moulton & Powell, Attorney at Law, Kennewick, Washington, and to J. K. Cheadle, Attorneys for Defendant, Priest Rapids Irrigation District.

You and each of you are hereby notified that the foregoing motion will be called up for hearing and argument before the Honorable Sam Driver, Judge of the above named court, in the courtroom of the Federal Court in the Federal Building at Yakima, Washington, at 9:30 a. m., Friday, March 14, 1947.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

State of Washington,
County of Yakima—ss.

I, Bernard H. Ramsey, of attorneys for petitioner, United States of America, do hereby certify that I served a duly certified copy of the foregoing motion to amend judgment on verdict by striking and of the notice of hearing thereon upon Moulton & Powell, of attorneys for the defendant, Priest Rapids Irrigation District, by depositing a copy of said motion and said notice in the United States mail in an envelope plainly addressed to Moulton & Powell, Attorneys at Law, Kennewick, Washington, postage prepaid, on the 12th day of March, 1947.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Subscribed and sworn to before me this 13th day of March, 1947.

(Seal) LIONEL PUGMIRE,

Notary Public in and for the State of Washington, residing at Yakima.

Filed March 13, 1947. [1200]

[Title of District Court and Cause.]

ORDER AMENDING JUDGMENT AND
DIRECTING SUBSTITUTION OF PARAGRAPH

This Matter having come on regularly in its order to be heard on the motion of the petitioner for an order amending judgment, and the petitioner ap-

pearing by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendant, Priest Rapids Irrigation District, a public corporation, appearing by Charles L. Powell, one of its attorneys, and the Court having considered the motion and the records and files herein, and having listened to argument of counsel and being duly advised.

Now, Therefore, It Is Hereby Ordered that the motion to amend the judgment on verdict entered on March 7, 1947, be and the same is hereby granted, and the paragraph reading as follows, to-wit:

“It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, and the whole thereof, shall be paid into the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of the Priest Rapids Irrigation District, and that pending determination by said Superior Court as to the parties entitled to receive the funds comprising said judgment with interest, the proceeds of said judgment shall be held in this Court subject to payments therefrom for purposes of meeting the expenses of said Priest Rapids Irrigation District in this condemnation action and in said dissolution proceedings upon authority for said payments by said district, approved by the Superior Court of the State of Washington, in and for Benton County, and by this Court, and,”

be and the same is hereby stricken from said judgment, and

It Is Further Ordered that there is substituted for said paragraph [1201] the following:

“It Is Further Ordered, Adjudged and Decreed that the judgment, and the whole thereof, shall be paid into this court and remain subject to the orders of this Court until such time as this Court shall order the payment of the same to the Superior Court of the State of Washington, in and for Benton County, for the use and benefit of the Priest Rapids Irrigation District in liquidation proceedings to be maintained in said Superior Court, and”

It Is Further Ordered that said substitution shall be considered the same as though made and entered in the original judgment herein at the time of the signing and filing thereof on March 7, 1947.

Done By The Court this 14th day of March, 1947.

SAM M. DRIVER,
United States District Judge.

Presented by:

CHARLES L. POWELL,
Of Attorneys for Defendant.

Approved as to form:

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Filed March 14, 1947. [1202]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, petitioner herein, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the jury verdict returned herein on the 20th day of February, 1947, and from the judgment on verdict and amended judgment on verdict entered thereon on the 14th day of March, 1947, herein.

BERNARD H. RAMSEY,
Of Attorneys for Petitioner,
United States of America.

Copies mailed this 6th day of June, 1947, to Charles L. Powell and J. K. Cheadle, Attorneys for Defendant.

A. A. LaFRAMBOISE,
Clerk.

By THOMAS GRANGER,
Deputy.

Filed June 6, 1947. [1203]

[Western Union Telegraph Form.]

1947 June 6 AM 5:50.

EAD41 Govt NL Pd—Washington D C 5

Bernard H. Armsey

Special Assistant to the Attorney General

512 Miller Bldg.

Reurtel June 4 authority is granted to file notice of appeal in Priest Rapids Irrigation District Case.

A. DEVITT VANECH,
Assistant Attorney General.

Filed June 6, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice is hereby given that the Priest Rapids Irrigation District, a public corporation, defendant in the above-entitled action, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit (1) from the refusal on March 7, 1947, by the above entitled court to enter the form of judgment on verdict presented on behalf of the Priest Rapids Irrigation District, which form included in favor of said district, and against the United States of America, petitioner herein, a deficiency judgment in the sum of \$668,701.00; and (2) from that part of the judgment on verdict entered in this action on the 7th day of March, 1947, which part ordered, adjudged and decreed that the petitioner, the United States of America, shall pay no other sum as just

compensation for the taking of the irrigation properties of the Priest Rapids Irrigation District other than the sum of \$170,500.00 which was deposited by said petitioner in the registry of the above entitled court as estimated just compensation for the taking of all of the property of said district and which was paid by the Clerk of said court pursuant to order of said court in discharge of the bonded indebtedness of said district, and which part of said judgment ordered, adjudged and decreed that of the value of said irrigation properties of said district, determined by the jury and adjudged by said court to be the sum \$365,845.00 as of April 1, 1943, "there shall be no compensation paid to the Priest Rapids Irrigation District for the taking of said irrigation properties, but that said bonds and said amount [\$170,500.00] of estimated just compensation deposited in the registry of this Court are adjudged to be liquidated by said irrigation properties;" said part of said judgment appealed from being part of the final judgment on verdict entered in this action on March 7, 1947.

/s/ J. K. CHEADLE,

Of attorneys for Appellant Priest Rapids Irrigation District.

Copy served this 6th day of June, 1947, on B. H. Ramsey, Attorney for Petitioner.

A. A. LaFRAMBOISE,
Clerk.

By THOMAS GRANGER,
Deputy.

[Endorsed]: Filed June 6, 1947. [1204]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know all men by these presents: That we, the Priest Rapids Irrigation District, a public corporation, and B. Salvini and J. H. Evett, directors of said district, as principals, cash in the amount of two hundred fifty dollars (\$250.00) having been deposited with the Clerk of the Court in lieu of surety, are held and firmly bound unto the above named petitioner, the United States of America, in the full and just sum of two hundred fifty dollars (\$250.00) to be paid to the said petitioner, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Executed this 5th day of June, 1947.

The condition of this obligation is such that:

Whereas, on the 7th day of March, 1947, in the above entitled action between the above named petitioner, the United States of America, and the above named defendants, Clemants P. Alberts, et al., Priest Rapids Irrigation District, a public corporation, a judgment was entered, which judgment in part ordered, adjudged and decreed that said petitioner shall pay no other sum as just compensation for the irrigation properties of the Priest Rapids Irrigation District other than the sum of \$170,500.00 deposited by said petitioner in the registry of the above-entitled court and paid by the Clerk of said Court in discharge of the bonded indebted-

ness of said district, and said district has appealed to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, Therefore, if said principals shall pay the costs if said appeal is dismissed or said part of the judgment appealed from is affirmed, or such [1205] costs as the appellate court may award if said part of the judgment is modified, then the above obligation to be void; otherwise in full force and effect.

PRIEST RAPIDS IRRIGATION DISTRICT

B. SALVINI and

J. H. EVETT,

Directors of Said District,

By J. K. CHEADLE,

Attorney for Priest Rapids
Irrigation District.

[Endorsed]: Filed June 6, 1947. [1206]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET CAUSE ON APPEAL

For cause shown and in the exercise of the discretion of the Court, it is

Ordered that the time to file the record and docket the cause on appeal of the above-entitled matter be and the same hereby is extended to 70 days from the date of the notice of appeal.

Done this 11th day of July, 1947.

SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed July 11, 1947. [1207]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

1. The district court erred in overruling the petitioner's demurrer to the defendant's amended answer.

2. The district court erred in overruling the petitioner's objection to the introduction of any testimony by defendant as to the value or the cost of any of the properties of the Priest Rapids Irrigation District acquired by the United States through the filing of the declaration of taking in No. 128-99.

3. The district court erred in refusing to instruct the jury to return a verdict for a nominal sum only.

4. The district court erred in entering judgment for defendant in the sum of \$473,356.

5. The district court erred in holding that defendant was entitled to receive compensation for the properties acquired by the United States through the filing of the declaration of taking in No. 128-99.

6. The district court erred in failing to apply the sum deposited as estimated just compensation by the Government toward satisfaction of the judgment entered upon the jury's award.

A. DEVITT VANECH,

Assistant Attorney General.

BERNARD H. RAMSEY,

Special Assistant to the Attorney General, Yakima, Wash.

JOHN F. COTTER,

Attorney, Dept. of Justice,

Washington, D. C.

State of Washington,
County of Benton—ss.

Due and legal service of the foregoing petitioner's statement of points on appeal is hereby acknowledged in Benton County, Washington, this 10th day of July, 1947, by receiving a duly certified copy thereof.

CHARLES L. POWELL,

Of Attorneys for Priest

Rapids Irrigation District.

Filed July 11, 1947. [1208]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

The United States, appellant in the above-entitled cause, designates the following for inclusion in the record on appeal:

Original Petition under War Powers Act, filed February 23, 1943.

Motion for Right of Immediate Possession, filed February 23, 1943.

Order Granting Right of Immediate Possession, filed February 23, 1943.

Amended Petition for Condemnation, filed April 22, 1943.

Motion for Immediate Possession on Amended Petition, filed April 22, 1943.

Order, Granting Right of Immediate Possession, filed April 22, 1943.

Motion of Priest Rapids Irrigation District re sequence of trial, filed May 15, 1943.

Petition of State of Washington to Intervene, filed May 29, 1943.

Order Allowing State of Washington to Intervene, filed May 29, 1943.

Certified copy of letter of Secretary of War dated March 4, 1944, and filed in District Court on May 12, 1944, authorizing and directing Declaration of Taking 99. [1209]

Amended Petition for Condemnation, filed May 12, 1944.

Declaration of Taking, filed May 12, 1944.

Appearance of Priest Rapids Irrigation District, filed August 19, 1944.

Stipulation Fixing Compensation of State of Washington Bonds, filed August 19, 1944.

Judgment Ordering Payment of Bonds to State of Washington, filed August 19, 1944.

Stipulation Fixing Compensation of Priest Rapids Irrigation District Bonds to Fireman's Relief and Pension Board, filed September 19, 1944.

Judgment Ordering Payment of Bonds to Fireman's Relief and Pension Board, filed September 19, 1944.

Stipulation Fixing Compensation for Bonds of Emily Corbett, filed September 29, 1944.

Judgment Ordering Payment of Bonds of Emily Corbett, filed September 29, 1944.

Answer to Amended Petition for Condemnation by Priest Rapids Irrigation District, filed February 12, 1945.

Demurrer to Answer and Cross Complaint of Priest Rapids Irrigation District, filed April 25, 1945.

Memorandum of Court Sustaining Demurrer, filed June 21, 1945.

Order Sustaining Demurrer, filed June 25, 1945.

First Amended Answer of Priest Rapids Irrigation District, filed September 21, 1945.

Demurrer to Amended Answer with Points and Authorities, filed October 24, 1945.

Motion for Leave to Intervene with Complaint in Intervention of C. I. Wright, et ux., filed March 23, 1946.

Petition of Priest Rapids Irrigation District for payment of balance on deposit, filed April 8, 1946.

Order Directing Payment of balance on deposit to Priest Rapids Irrigation District, filed April 8, 1946.

Order Extending Time on hearing of demurrer, filed April 11, 1946. [1210]

Motion for Appointment of Trustee or Receiver and for Restraining Order, filed May 6, 1946.

Order to Show Cause, filed May 6, 1946.

Return to Order to Show Cause, filed May 14, 1946.

Transcript of Court Proceedings on Order to Show Cause, filed June 4, 1946.

Order Denying Motion for Leave to Intervene, filed June 26, 1946.

Order Overruling Demurrer, filed June 26, 1946.

Order Denying Motion for Appointment of Trustee or Receiver and for Restraining Order, filed June 26, 1946.

Order for Jury View, filed February 10, 1947.

Defendant's Requested Instructions, filed February 17, 1947.

Petitioner's Requested Instructions, filed February 18, 1947.

Jury Verdict returned February 20, 1947.

Special Interrogatory returned February 20, 1947.

Judgment on Verdict, filed March 7, 1947.

Motion to Amend Judgment on Verdict, filed March 13, 1947.

Notice of Hearing on Motion, filed March 13, 1947.

Order Amending Judgment on Verdict, filed March 14, 1947.

Petitioner's Notice of Appeal, filed June 6, 1947.

Defendant's Notice of Appeal, filed June 6, 1947.

Defendant's Bond on Appeal, filed June 6, 1947.

Record of proceedings at the trial.

Statement of points upon which petitioner relies.

This designation of the contents of the record on appeal.

/s/ A. DEVITT VANECH,

Assistant Attorney General.

BERNARD H. RAMSEY,

Special Assistant to the Attorney General, Yakima, Washington.

/s/ JOHN F. COTTER,

Attorney, Department of Justice, Washington, D. C.

State of Washington,
County of Benton—ss.

Due and legal service of the foregoing petitioner's designation of record is hereby acknowledged in Benton County, Washington, this 10th day of July, 1947, by receiving a duly certified copy thereof.

CHARLES L. POWELL,

Of Attorneys for Priest
Rapids Irrigation District.

Filed July 11, 1947. [1212]

[Title of District Court and Cause.]

CROSS APPELLANT'S STATEMENT
OF POINTS ON APPEAL

1. The district court erred in ruling that the value of the defendant district's so-called irrigation properties would be determined by the jury only for limited purposes, excluding a deficiency award for said irrigation properties.

2. The district court erred in refusing to admit evidence and in rejecting the offer of proof, offered in the absence of the jury as bearing on legal issues before the court, that the United States in condemnation awards and settlements paid only \$630,960.80 for all of the privately owned lands and improvements within the boundaries of the defendant district.

3. The district court erred in refusing to instruct the jury to return a verdict in the amount of the value of all of the property of the defendant district taken by the petitioner.

4. The district court erred in instructing the jury to value the defendant district's properties separately and to return a verdict in the sum of the value of only the so-called non-irrigation properties.

5. The district court erred in ordering that the petitioner, for the taking of defendant district's irrigation properties, the value of which the jury determined to be \$365,845.00 as of April 1, 1943, shall pay no sum other than the \$170,500.00 deposited as estimated just compensation for all of the property of defendant district.

6. The district court erred in refusing to enter a deficiency judgment for defendant in the sum of \$668,701.00.

/s/ CHARLES L. POWELL,
MOULTON & POWELL,
Kennewick, Washington.

/s/ J. K. CHEADLE,
Attorneys for Cross Appellant Priest Rapids Irrigation District.

[Endorsed]: Filed July 14, 1947. [1214]

[Title of District Court and Cause.]

APPELLEE AND CROSS APPELLANT'S
DESIGNATION OF RECORD

The Priest Rapids Irrigation District, appellee and cross-appellant in the above-entitled cause, designates the following for inclusion in the record on appeal:

Copy of letter of Secretary of War, dated February 18, 1943, and filed in District Court in No. 128 on February 23, 1943, authorizing and directing petition for condemnation.

Affidavit supporting Motion for Right of Immediate Possession, filed February 23, 1943.

Copy of letter of Secretary of War, dated April 12, 1943 and filed in District Court in No. 128 on April 22, 1943, authorizing and directing amended petition for condemnation.

Affidavit supporting Motion for Amended Order Granting Right of Immediate Possession, filed April 22, 1943.

Amended Petition for Condemnation, No. 128-43, as to Tracts D-250, E-286, E-297, E-325, F-365, G-494, P-1291, P-1331, P-1336, R-1471, R-1549, S-1611, S-1632, S-1647, S-1658, filed August 26, 1943.

Transcript of Court Proceedings, October 12, 1943, Vol. IV, p. 420, line 21 to p. 435, line 15, both inclusive.

Transcript of Court Proceedings, encaptioned "U. S. of America v. Clements P. Alberts, et al., T. J. Chalcraft, et al., No. 128"—No. 128-18—had in Court's chambers on April 26, 1944. [1215]

Copy of letter of Secretary of War, dated May 4, 1944 and filed in District Court in No. 128-99 on May 12, 1944, authorizing and directing Declaration of Taking No. 128-99.

Order on Declaration of Taking, filed May 15, 1944.

Exhibits attached to Motion for Appointment of Trustee or Receiver and for Restraining Order, filed May 6, 1946.

Exhibit attached to Return to Order to Show Cause, filed May 14, 1946.

Transcript of Court proceedings in Nos. 128-99 and 128-100, being transcript of the oral opinion of the Court delivered on June 1, 1946 after conclusion of argument upon motions and demurrers beginning on May 15, 1946 and resumed on May 31, 1946, filed June 4, 1946.

Proposed Judgment on Verdict presented by Priest Rapids Irrigation District and Refused by Court, filed March 7, 1947.

Statement of points upon which defendant Priest Rapids Irrigation District relies.

This designation of the contents of the record on appeal.

/s/ CHARLES L. POWELL,
MOULTON & POWELL,

/s/ J. K. CHEADLE,

Attorneys for Cross-Appellant Priest Rapids
Irrigation District.

[Endorsed]: Filed July 19, 1947. [1216]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of Washington,
County of Spokane—ss.

J. K. Cheadle, being first duly sworn, on oath, says: That he is one of the attorneys for the defendant Priest Rapids Irrigation District, appellee and cross appellant in the above-entitled cause; that affiant served “Cross Appellant’s Statement of Points on Appeal” and “Appellee and Cross Appellant’s Designation of Record”, copies of which are attached to this affidavit, by depositing on this 19th day of July, 1947, a copy of each in the post office at Spokane, in the County of Spokane, State of Washington, with postage fully prepaid, directed to Mr. Bernard H. Ramsey, Special Assistant to the Attorney General, Miller Building, Yakima, Washington.

/s/ J. K. CHEADLE.

Subscribed and sworn to before me this 19th day of July, 1947.

[Seal] /s/ JANE A. THOMPSON,
Notary Public in and for the State of Washington,
residing at Spokane.

[Endorsed]: Filed July 19, 1947. [1217]

[Title of District Court and Cause.]

United States of America,
Eastern District of Washington—ss.

CERTIFICATE OF CLERK

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify the foregoing typewritten pages in three (3) volumes, numbered 1 to 1218, inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein as called for by the designation of record on appeal filed by counsel for the Appellant and Cross-Appellee, and by the designation of record on appeal filed by counsel for the Appellee and Cross-Appellant, as the same remains on file and of record in my office, and that the same constitutes the record on appeal of the Appellant and Cross-Appellee, United States of America, and of the Appellee and Cross-Appellant, Priest Rapids Irrigation District, from the Judgment on the Verdict of the District Court of the United States for the Eastern District of Washington, to the United States Circuit of Appeals for the Ninth Circuit.

I Further Certify that the fees of the Clerk of this Court for preparing and certifying that portion of the foregoing typewritten record as called for in the designation of record on appeal of the Appellee and Cross-Appellant, Priest Rapids Irrigation District, amount to \$13.10, and the same has been paid in full by Mr. J. K. Cheadle, of attorneys for said Appellee and Cross-Appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima, Washington, in said district, this 7th day of August, 1947.

[Seal]

A. A. LaFRAMBOISE,

Clerk of the United States

District Court.

By /s/ THOMAS GRANGER,

Deputy.

[Endorsed]: No. 11704. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Priest Rapids Irrigation District, a public corporation, Appellee. Priest Rapids Irrigation District, a public corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. In Three Volumes. Upon appeal from the District Court of the United States for the Eastern District of Washington, Southern Division.

Filed August 11, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of
Appeals for the Ninth District

No. 11704

UNITED STATES OF AMERICA,

Appellant.

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PORTIONS OF RECORD TO BE
PRINTED

The United States of America, appellant in the above-entitled case, adopts the statement of points filed in the district court as the statement of points to be relied upon in this Court and desires that the whole of the record as filed and certified be printed in its entirety.

Respectfully submitted,

/s/ J. EDWARD WILLIAMS,
Acting Assistant Attorney
General.

/s/ JOHN F. COTTER,
Attorney, Department of
Justice, Washington, D. C.

[Endorsed]: Filed August 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

CROSS APPELLANT'S STATEMENT
OF POINTS

The Priest Rapids Irrigation District, cross appellant in the above entitled case, adopts the statement of points filed in the District Court as the statement of points to be relied upon in this Court.

Respectfully submitted,

/s/ J. K. CHEADLE,
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